ERICA LAFFERTY ET AL. *v.* ALEX EMRIC JONES ET AL.
(AC 46194)

Bright, C. J., and Moll and Prescott, Js.

Syllabus

The plaintiff in error, P, the attorney for J and several other defendants in the underlying consolidated actions, filed a writ of error challenging the order of the trial court suspending him from the practice of law for a period of six months. The plaintiffs in those actions, including certain family members of those killed in the mass shooting at the Sandy Hook Elementary School in Newtown, had filed suit against J and the other defendants as a result of J's use of his nationally syndicated radio program and Internet websites he owned to publish content proclaiming that the mass shooting was a staged event. During trial, the court issued a protective order concerning sensitive personal and confidential information about the plaintiffs that the defendants had obtained through the discovery process. The order limited use of the information to counsel of record and others involved in the preparation and litigation of the underlying actions. The plaintiffs' confidential information was released during the course of communications P had with attorneys in Texas, including R, about related actions pending there and the possible collaboration between P and R on the cases in both states. During that time period, L, a Texas attorney, filed a bankruptcy petition for several defendants in the Texas cases. L then contacted W, who was counsel prior to P for several of the defendants in the underlying Connecticut actions,

and requested access to all of the discovery materials obtained in the Connection actions. W then emailed L and P, warning that L might not be authorized to access the confidential documents in light of the protective order. Later that day, L obtained copies of the protective order. P did not ask L to sign a confidentiality order, and L was not informed by P or anyone from P's law firm that the discovery materials he was being provided included the plaintiffs' confidential information. A, an attorney in P's law firm, then emailed L, asking him to give R a hard drive that contained the confidential information. L responded to A's email, stating that he already had given the hard drive to R, who also was not asked to sign a confidentiality agreement. Neither L nor R had filed an appearance in the Connecticut cases. P thereafter informed M, the plaintiffs' counsel in the Connecticut actions, about the release of the confidential information. The trial court learned from media reports that the plaintiffs' confidential information had been released to unauthorized individuals. The court, sua sponte, then scheduled a hearing requiring P to appear and show cause as to whether he should be referred to disciplinary authorities or sanctioned by the court as a result of the disclosure of the plaintiffs' confidential information. After the court stated during the show cause hearing that it would not refer the matter to disciplinary authorities but would instead conduct disciplinary proceedings itself, P filed motions to dismiss the show cause order and to disqualify the court from presiding over the disciplinary proceedings. P claimed that the court's impartiality might reasonably be questioned as a result of its decision to conduct the disciplinary proceedings, rather than to refer the matter to disciplinary authorities, as well as the court's statements during the show cause hearing about the dismissal of a grievance complaint against P three years earlier that pertained to an affidavit he had filed in the underlying actions. The court denied both motions and thereafter found, by clear and convincing evidence, that P had violated several Rules of Professional Conduct and suspended him from the practice of law. On P's appeal to this court, *held*:

1. P could not prevail on his unpreserved claim that the trial court violated his right to procedural due process by initiating disciplinary proceedings against him on the basis of events that occurred outside of the court's presence: after weighing the factors set forth in the balancing test for procedural due process claims under *Mathews* v. *Eldridge* (424 U.S. 319), this court was not persuaded that due process mandated the imposition of a constraint on the trial court's inherent authority to regulate attorney conduct and to impose discipline by distinguishing between conduct that occurred before the court and conduct that transpired outside of the court's presence, as P was afforded notice and an opportunity to defend his interests, nothing in the record indicated that the disciplinary proceeding was tainted by publicity surrounding the underlying actions, and this court did not discern that the trial court's decision to conduct the disciplinary proceeding placed P's property

interest in his law license at risk of an erroneous deprivation; moreover, although P contended that the trial court's ability to refer the matter to disciplinary authorities mitigated any adverse effect on the court's interests in managing its docket and protecting the rights of other parties, the court had a significant interest in immediately adjudicating the serious allegations against P, which enabled the court to inquire promptly into the matter.

2. P could not prevail on his claim that the trial court abused its discretion in denying his motion to disqualify the court from presiding over the disciplinary proceedings: this court could not conclude that the trial court's impartiality reasonably could be questioned as a result of the court's statements about the dismissal of the earlier grievance complaint against P and its decision to conduct the disciplinary proceedings rather than to refer the matter to disciplinary authorities, the court having explained on the record that its recitation of the background of the underlying actions, including the dismissal of the grievance complaint against P, constituted an effort to conduct fair and transparent disciplinary proceedings and to accommodate P's counsel, who had recently appeared on behalf of P and had requested a continuance for medical reasons; moreover, because P did not claim that disqualification of the trial court was required on the ground of actual bias, P did not present a viable due process claim that would be subject to this court's plenary review.

3. The trial court improperly determined that P violated certain Rules of Professional Conduct pertaining to his handling of the plaintiffs' confidential information and violation of the protective order, as well as his sponsoring of an out-of-state attorney in Connecticut:

a. This court concluded that the trial court correctly applied rule 1.1 of the Rules of Professional Conduct in finding that P failed to act competently in handling the plaintiffs' confidential records; contrary to P's contention that rule 1.1 was inapplicable to him in the circumstances of this case because it makes no mention of an attorney's duty to persons other than his client, to provide competent representation in accordance with rule 1.1, an attorney must responsibly engage in discovery and safeguard sensitive discovery materials, whether provided by the client or produced by an opposing party, and P's conduct ran the risk of subjecting the defendants he represented to sanctions.

b. The trial court incorrectly determined that P violated rule 1.15 (b) of the Rules of Professional Conduct, which addresses the safeguarding of funds and financial information but does not encompass discovery materials such as the plaintiffs' confidential records: contrary to the trial court's interpretation of the phrase "[o]ther property" in rule 1.15 (b) as encompassing the plaintiffs' confidential records, this court's reading of rule 1.15 as a whole and its application of the rule of statutory construction requiring that terms be assigned their ordinary meaning, led it to construe the phrase "[o]ther property" as excluding discovery materials; moreover, the majority of the provisions of rule 1.15 expressly address, in whole or in part, matters that are financial in nature; furthermore, the commentary to rule 1.15 did not support the trial court's assertion

that the plaintiffs' records were included within the meaning of "[o]ther property," as the commentary expressly provides guidance on safekeeping moneys and securities, neither of which is similar to discovery materials produced during litigation.

c. The trial court incorrectly determined that P violated rule 3.4 (3) of the Rules of Professional Conduct, which addresses an attorney's obligation to obey a court's directives: the record did not establish by clear and convincing evidence that P knowingly disobeyed the requirements of the protective order, as the evidence did not support the court's finding that P had actual knowledge of the fact that the hard drive that was transferred by A, a subordinate attorney in P's law firm, to L, and then to R, contained the plaintiffs' confidential information; moreover, P's statements in an email addressed to M, the plaintiffs' counsel in Connecticut, about the transfer of the hard drive did not constitute clear and convincing evidence that P had actual knowledge that the hard drive contained the plaintiffs' confidential information, and an email P received from W, warning about the protective order, did not show that P knew he was violating the protective order when he directed A to send the hard drive to L and R.

d. The evidence was not adequate to support the trial court's determination that P violated rule 5.1 (c) of the Rules of Professional Conduct, which expresses a general principle of personal responsibility for the acts of another, to the extent that P acted as the sponsoring attorney in Connecticut for R, who had not filed an appearance in the underlying actions at the time of the unauthorized disclosure to him of the confidential records: P was not involved in R's inadvertent disclosure of the confidential documents to B, the plaintiffs' counsel in the Texas case, and there was no evidence that P gave R improper directions with regard to the confidential records or that P knowingly ratified R's disclosure of the confidential records; moreover, clear and convincing evidence did not exist establishing that P knew of R's conduct at a time when remedial action could have been taken to avoid or mitigate its consequences, and there was insufficient evidence to establish that P knowingly authorized the transfer of the confidential records or that he knew they had been disclosed prior to informing M that they had been released; furthermore, this court rejected P's assertion that the trial court improperly applied rule 5.1 (b) and (c) concerning the exercise of his supervisory authority over A, as it was implicit in the trial court's decision that P did not make reasonable efforts to ensure that A conformed to the Rules of Professional Conduct under rule 5.1 (b) and that A violated the rules for purposes of rule 5.1 (c).

e. P could not prevail on his claim that his actions did not fall within the scope of rule 8.4 (4) of the Rules of Professional Conduct, which addresses conduct that is prejudicial to the administration of justice: the trial court correctly applied that rule in finding that P improperly permitted the disclosure to unauthorized persons of the plaintiffs' personal and sensitive information and that his misconduct unilaterally

imposed a significant cost on the plaintiffs in their attempt to obtain justice in the underlying actions; moreover, despite P's assertion that his failure to properly maintain records did not affect the trial process or the court's administration of justice, as well as his claim that there was no evidence that he insulted or criticized the trial court or attempted to hinder the disciplinary proceedings, this court found P's restrictive interpretation of rule 8.4 (4) to be untenable, as his mishandling of the plaintiffs' confidential records fell within the expansive range of misconduct encompassed by rule 8.4 (4).

4. In light of this court's conclusion that the trial court improperly determined, in whole or in part, that P had violated rules 1.15 (b), 3.4 (3) and 5.1 (c) of the Rules of Professional Conduct, the disciplinary order, which was not predicated on P's violation of any particular rule, could not stand; accordingly, the case was remanded to the trial court for a new hearing on sanctions before a different judge.

Argued January 2—officially released May 28, 2024

Procedural History

Writ of error from the order of the Superior Court in the judicial district of Waterbury, *Bellis*, *J.*, suspending the plaintiff in error from the practice of law for a period of six months; thereafter, the defendants in error each filed a motion to dismiss; subsequently, this court granted the motion to dismiss and dismissed the writ of error as to the defendant in error *Hon. Barbara N. Bellis* and denied the motion to dismiss as to the defendant in error Office of Chief Disciplinary Counsel; thereafter, the court, *Bellis*, *J.*, denied the motion for a stay of its order filed by the plaintiff in error; subsequently, the court, *Bellis*, *J.*, issued an articulation of its decision. *Writ granted in part*; *order vacated*; *further proceedings*.

Christopher T. DeMatteo, for the appellant (plaintiff in error Norman A. Pattis).

Brian B. Staines, chief disciplinary counsel, for the appellee (defendant in error Office of Chief Disciplinary Counsel).

Opinion

MOLL, J. The plaintiff in error, Norman A. Pattis, a Connecticut attorney and counsel of record for the defendants, Alex Emric Jones and Free Speech Systems, LLC,[1] in the underlying consolidated tort actions[2] arising out of the mass shooting at Sandy Hook Elementary School, filed this writ of error challenging the order of the trial court suspending him from the practice of law for a period of six months after determining that he had violated the Rules of Professional Conduct. Pattis claims that the court (1) violated his procedural due process rights in initiating, sua sponte, disciplinary proceedings against him, pursuant to its inherent authority to discipline attorneys, on the basis of conduct that occurred outside of its presence, (2) improperly denied his motion to disqualify the Honorable Barbara N. Bellis from presiding over the disciplinary proceedings, (3) improperly determined that he had violated the Rules of Professional Conduct, and (4) imposed an arbitrary and disproportionate disciplinary order. We reject Pattis' first two claims, but we conclude that the court incorrectly found that he violated certain provisions of the Rules of Professional Conduct. Accordingly, we

[1] There were additional defendants who participated in the underlying consolidated actions, including three that Pattis also represented, namely, Infowars, LLC, Infowars Health, LLC, and Prison Planet TV, LLC. Jones and Free Speech Systems, LLC, however, were the only remaining defendants at the time of the show cause hearing described in this opinion. We refer in this opinion (1) to Jones and Free Speech Systems, LLC, collectively as the defendants, and (2) to Jones, Free Speech Systems, LLC, Infowars, LLC, Infowars Health, LLC, and Prison Planet TV, LLC, collectively as the Jones defendants.

[2] "The consolidated actions are *Lafferty* v. *Jones*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. CV-18-6046436-S; *Sherlach* v. *Jones*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. CV-18-6046437-S; and *Sherlach* v. *Jones*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. CV-18-6046438-S." *Lafferty* v. *Jones*, 220 Conn. App. 724, 725 n.2, 299 A.3d 1161 (2023).

grant in part the writ of error and remand the matter to the court to vacate the improper findings, as well as the attendant disciplinary order, and to conduct a new hearing on sanctions before a different judge.

The following facts and procedural history, as set forth by the trial court in its decision, as set forth by this court in prior decisions, or as are undisputed in the record, are relevant to our resolution of this writ of error. "On December 14, 2012, Adam Lanza entered Sandy Hook Elementary School (Sandy Hook), and thereafter shot and killed twenty first-grade children and six adults, in addition to wounding two other victims who survived the attack. In the underlying consolidated actions, the plaintiffs, consisting of a first responder, who was not a victim of the Sandy Hook shooting but was depicted in the media following the shooting, and the immediate family members of five of the children, one educator, the principal of Sandy Hook, and a school psychologist who were killed in the shooting,[3] brought these separate actions . . . .

"In the complaints, the plaintiffs alleged that [Jones] hosts a nationally syndicated radio program and owns

[3] "There are three underlying actions. In the first action, the plaintiffs are Erica Lafferty, David Wheeler, Francine Wheeler, Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Jennifer Hensel, Jeremy Richman, Donna Soto, Carlee Soto-Parisi, Carlos Soto, Jillian Soto, and William Aldenberg. On November 29, 2018, the plaintiffs moved to consolidate the second and third cases . . . with their action pursuant to Practice Book § 9-5. William Sherlach is a plaintiff in the second and third cases and Robert Parker is a plaintiff in the third case. On December 17, 2018, the court granted the motion to consolidate the cases. Jeremy Richman died while this action was pending, and, on June 7, 2021, the court granted the plaintiffs' motion to substitute Jennifer Hensel, executrix of the estate of Jeremy Richman, as a plaintiff in his place; however, on June 8, 2021, Jennifer Hensel, in her capacity as executrix of the estate of Jeremy Richman, withdrew her claims against the defendants. On October 20, 2021, the court granted Erica Lafferty's motion to substitute Richard Coan, trustee of the bankruptcy estate of Erica L. Garbatini, in her place as a plaintiff in this case." *Lafferty* v. *Jones*, 222 Conn. App. 855, 858 n.1, 307 A.3d 923 (2023). On December 14, 2023, the court granted a motion to substitute Erica Ash, also known as Erica Lafferty, as a plaintiff in place of Richard Coan, trustee of the

and operates multiple Internet websites that hold themselves out as news and journalism platforms. The plaintiffs further alleged that [Jones] began publishing content related to the Sandy Hook shooting on his radio and Internet platforms and circulated videos on his YouTube channel. Specifically, the plaintiffs alleged that, between December 19, 2012, and June 26, 2017, [Jones] used his Internet and radio platforms to spread the message that the Sandy Hook shooting was a staged event to the millions of his weekly listeners and subscribers. The complaints each consisted of five counts, including causes of action sounding in invasion of privacy by false light, defamation and defamation per se, intentional infliction of emotional distress, negligent infliction of emotional distress,[4] and a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq."[5] (Citation omitted; footnotes added.) *Lafferty* v. *Jones*, 222 Conn. App. 855, 859–60, 307 A.3d 923 (2023).

As the trial court, *Bellis*, *J.*, set forth in its decision, "[o]n February 22, 2019, the court granted [a] motion for protective order filed by the Jones defendants, which

bankruptcy estate of Erica L. Garbatini. All references in this opinion to the plaintiffs are to the remaining plaintiffs and do not include Jeremy Richman, Jennifer Hensel, as executrix of the estate of Jeremy Richman, or Richard Coan, trustee of the bankruptcy estate of Erica L. Garbatini.

[4] The plaintiffs subsequently abandoned the negligent infliction of emotional distress claim.

[5] "On November 15, 2021, the [trial] court [*Bellis*, *J.*] entered a default against the [Jones] defendants as a sanction for failing to fully and fairly comply with the plaintiffs' discovery requests. The [underlying consolidated] cases proceeded to trial for a hearing in damages, and . . . a verdict was reached and a judgment was rendered in each case in favor of the plaintiffs." *Lafferty* v. *Jones*, 222 Conn. App. 855, 860, 307 A.3d 923 (2023). Following the court's denials of postverdict motions, the defendants appealed from the judgments rendered in the underlying consolidated actions, which appeals were consolidated. The consolidated appeal remains pending before this court. See *Lafferty* v. *Jones*, Connecticut Appellate Court, Docket No. AC 46131 (appeal filed December 29, 2022).

allowed, inter alia, the plaintiffs' medical and/or mental health records to be designated as confidential.[6] The court order limited the use of such confidential information.[7] On June 16, 2021, the court granted, without objection, the plaintiffs' motion to modify the protective order[8] to create a Highly Confidential-Attorneys Eyes Only designation.[9] Finally, on June 15,

[6] "The order limited access to confidential information to the following individuals in this case and all cases consolidated with this case: 'All counsel of record, including staff persons employed by such counsel; the parties, but only to the extent reasonably necessary to the litigation of this case; any consultant, investigator or expert (collectively "Expert") who is assisting in the preparation and/or trial of this action, but only to the extent reasonably necessary to enable such Expert to render such assistance; any deponent or witness who is reasonably believed to have been eligible to have access to Confidential Information by virtue of his or her employment or other affiliation with the Designating Party, and other non-party witnesses deposed in this case but only for the time reasonably necessary to question the witness; court reporters, videographers and outside vendors performing litigation support services for parties in this case; counsel who are presently representing clients in a case against any one or more of the [Jones] Defendants, which arises out of the same or similar set of facts, transactions or occurrences, provided that before disclosing Confidential Information to such counsel, such Defendant (1) must receive notice of the intention to disclose Confidential Information to such counsel; (2) must have the opportunity to move for a protective order in the case in which counsel is involved; and (3) a ruling on the motion for protective order must be issued; and the Court and its personnel.' "

[7] "The protective order stated as follows: 'Except to the extent expressly authorized by this Protective Order, Confidential Information shall not be used or disclosed for any purpose other than the preparation and trial of this case, all cases consolidated with this case, and in any appeal taken from any order or judgment herein.' This 'Limitations on Use' provision can be found in the subsequent modifications to the protective order."

[8] "The motion stated as justification for the modification the fact that the Jones defendants were seeking the plaintiffs' highly personal information such as medical histories and psychiatric records; abusive litigation tactics; and the propensity of Jones to make the plaintiffs' personal information a topic on his show."

[9] "The modified protective order limited access to Highly Confidential-Attorneys Eyes [Only] information to counsel of record, and staff persons employed by such counsel who reasonably need to handle such information; outside consulting experts or testifying expert witnesses, but only to the extent reasonably necessary; any deponent or witness who is reasonably believed to have been eligible to have access to Confidential Information by virtue of his or her employment or other affiliation with the Designating Party, and other non-party witnesses deposed in this case but only for the time reasonably necessary to question the witness, and only to the extent such questioning is reasonably necessary; court reporters, videographers

2022,[10] the court granted by consent a final modification to the order of protection,[11] adding 'sensitive information of parties or witnesses, which is ordinarily kept confidential' as a category of information which could be designated as confidential.[12] All . . . versions of the protective order required that '(a)ll persons having access to Confidential Information' to 'maintain it in a safe and secure manner.' " (Footnotes added; footnotes in original; footnote omitted.)

"On August 4, 2022, in each of the [underlying] consolidated actions, the . . . court issued, sua sponte, an

and outside vendors performing litigation support services for parties in this case; and the court and its personnel. The only sharing provision in the order allowed '(c)ounsel who are presently representing clients in a case against any one or more of the [Jones] defendants' to share confidential information with each other, that is, counsel representing plaintiffs in cases against a Jones defendant."

[10] On March 7, 2022, the court granted by consent a motion filed by the plaintiffs to modify the protective order. The modifications were included in the final modification entered on June 15, 2022.

[11] "The plaintiffs, in [a motion to modify the protective order filed on June 13, 2022], stated as follows: 'During the course of discovery, sensitive personal information, which would normally be kept confidential, especially in a case of this degree of public exposure, has been disclosed and/or discovered.' The plaintiffs were concerned that Jones, or other Jones defendants, would use their personal information publicly, given their view of the conduct of Jones during the course of the litigation."

[12] "The order limited access to Highly Confidential-Attorneys Eyes Only information to the same individuals as the prior order, adding the words 'in this action' to further define 'counsel of record': 'a. Counsel of record in this action, and staff persons employed by such counsel who reasonably need to handle such information; b. Outside consulting experts or testifying expert witnesses, but only to the extent reasonably necessary. Any Party choosing to show such material to such expert shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order; c. Any deponent or witness who is reasonably believed to have been eligible to have access to Confidential Information by virtue of his or her employment or other affiliation with the Designating Party, and other non-party witnesses deposed in this case but only for the time reasonably necessary to question the witness, and only to the extent such questioning is reasonably necessary; d. Court reporters, videographers and outside vendors performing litigation support services for parties in this case; and The Court and its personnel. No such information shall be disclosed to any other party or person.' "

order requiring . . . Pattis to appear and show cause at a hearing on August 10, 2022, 'as to whether he should be referred to disciplinary authorities or sanctioned by the court directly; see . . . Practice Book [§] 2-45;[13] regarding the purported release of medical records of the plaintiffs, in violation of state and federal statute and th[e] court's protective order, to unauthorized individuals.' The order also directed the clerk 'to notify Chief Disciplinary Counsel, Brian Staines [disciplinary counsel], of the show cause hearing and . . . to immediately provide him with a copy of this order.' Disciplinary counsel had previously filed an appearance." (Footnote added.) *Lafferty* v. *Jones*, 220 Conn. App. 724, 726, 299 A.3d 1161 (2023).

The court held the show cause hearing on August 10, 17 and 25, 2022. Pattis appeared and was represented by counsel, and disciplinary counsel also participated. During the August 10, 2022 hearing, the court, inter alia, (1) stated that it intended to conduct the disciplinary proceedings directly, rather than refer the matter to disciplinary authorities, (2) noted that it had "only learned of [the release of the plaintiffs' confidential records to unauthorized individuals] by reading headlines,"[14] and (3) posed questions that it wanted addressed by the evidence adduced during the hearing. On August 15, 2022, Pattis filed a motion to dismiss the

[13] Practice Book § 2-44 provides: "The Superior Court may, for just cause, suspend or disbar attorneys and may, for just cause, punish or restrain any person engaged in the unauthorized practice of law."

Practice Book § 2-45 provides: "If such cause occurs in the actual presence of the court, the order may be summary, and without complaint or hearing; but a record shall be made of such order, reciting the ground thereof. Without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the Statewide Grievance Committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction."

[14] The court further stated: "I am clearly gravely concerned about what I had to hear in headlines on the news. It was never reported to me by counsel that there were any issues. But just what I read in the news."

show cause order. On August 16, 2022, Pattis filed a motion to disqualify Judge Bellis from presiding over the disciplinary proceedings. On August 17, 2022, the court denied both motions.

The parties offered evidence during the show cause hearing on August 17 and 25, 2022. Pattis called six character witnesses. Disciplinary counsel called as witnesses (1) Christopher M. Mattei, the plaintiffs' attorney, (2) Federico Andino Reynal, a Texas attorney,[15] and (3) Kyung S. Lee, another Texas attorney. Disciplinary counsel also called Pattis as a witness; however, following each of disciplinary counsel's questions, Pattis invoked his right to remain silent pursuant to the fifth amendment to the United States constitution, article first, § 8, of the Connecticut constitution, and General Statutes § 51-35. The court also admitted several exhibits in full, including various email correspondence. The parties subsequently filed posthearing briefs.

On January 5, 2023, the court issued a memorandum of decision, determining, by clear and convincing evidence, that Pattis had violated rules 1.1, 1.15 (b), 3.4 (3), 5.1 (b), 5.1 (c), and 8.4 (4) of the Rules of Professional Conduct. As discipline, the court suspended Pattis from the practice of law for a period of six months.[16] This writ of error followed.[17] Additional facts and procedural history will be set forth as necessary.

[15] On August 4, 2022, the court issued a separate show cause order directed to Reynal, who was the subject of an application filed by Pattis to appear pro hac vice in the underlying consolidated cases. The disciplinary proceedings against Reynal are not germane to this writ of error.

[16] The disciplinary order is stayed pending the final resolution of this writ of error. See *Lafferty* v. *Jones*, supra, 220 Conn. App. 726–27 n.4 (setting forth procedural background of stay order).

[17] In a docketing statement filed on January 30, 2023, Pattis named disciplinary counsel as the defendant in error. In an amended docketing statement filed the next day, Pattis named Judge Bellis as a second defendant in error. Both disciplinary counsel and Judge Bellis filed motions to dismiss the writ of error. This court (1) granted Judge Bellis' motion to dismiss, dismissing the writ of error as it pertained to her, but (2) denied disciplinary counsel's motion to dismiss. See *Lafferty* v. *Jones*, supra, 220 Conn. App. 731.

I

Pattis first claims that the trial court violated his rights to procedural due process pursuant to the fifth and fourteenth amendments to the United States constitution[18] in initiating, sua sponte, disciplinary proceedings against him, pursuant to its inherent authority to discipline attorneys, on the basis of events that transpired outside of its presence, namely, the release of the plaintiffs' confidential records to unauthorized individuals. We conclude that this unpreserved claim, although reviewable, fails on the merits under the third prong of *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).

The following additional procedural history is relevant to our resolution of this claim. The show cause order provided in relevant part that Pattis was "ordered to show cause . . . as to whether he should be referred to disciplinary authorities or sanctioned by the court directly, see . . . Practice Book [§] 2-45, regarding the purported release of medical records of the plaintiffs, in violation of state and federal statute and th[e] court's protective order, to unauthorized individuals. . . ." In his motion to dismiss the show cause order, Pattis asserted, inter alia, that the court lacked subject matter jurisdiction or authority to pursue the show cause order because (1) § 2-45 requires the just cause to occur in the "actual presence of the court" and (2) the record reflected that the court learned of the release of the

[18] Pattis also claims that the court violated his right to procedural due process pursuant to article first, § 8, of the Connecticut constitution. Pattis has not provided a separate state constitutional analysis, and, therefore, we deem his state constitutional claim to be abandoned. See *Glanz* v. *Commissioner of Motor Vehicles*, 210 Conn. App. 515, 521 n.3, 270 A.3d 766 (2022). "In any event, [o]ur Supreme Court has repeatedly held that, as a general rule, the due process clauses of both the United States and Connecticut constitutions have the same meanings and impose similar limitations." (Internal quotation marks omitted.) Id.

plaintiffs' confidential records to unauthorized individuals through media sources.[19]

On August 17, 2022, the court denied the motion to dismiss,[20] reasoning that, "[a]n attorney, as an officer of the court in the administration of justice, is continually accountable to it for the manner in which he exercises the privilege which has been accorded him. . . . An attorney must conduct himself or herself in a manner that comports with the proper functioning of the judicial system. . . . The court has the inherent authority to discipline attorneys. . . . Our rules of practice codify the authority of the court to summarily discipline an attorney, without the need to refer the attorney to the disciplinary authorities. . . . Practice Book [§] 2-45 provides that the court has authority to address attorney misconduct that occurs in its presence, and [Practice Book §] 2-32 (a) (2) (F)[21] recognizes that courts may

[19] In support of his motion to dismiss the show cause order, Pattis further claimed that (1) there was a bankruptcy stay in effect and (2) the court did not afford him sufficient notice of the federal and state statutes that he allegedly violated. Pattis has not raised either issue in this writ of error.

[20] The court heard argument from Pattis' trial counsel on the motion to dismiss during the August 17, 2022 hearing. Following argument, the court orally denied the motion to dismiss and stated that a written order would follow.

[21] Practice Book § 2-32 (a) provides in relevant part: "Any person, including disciplinary counsel, or a grievance panel on its own motion, may file a written complaint, executed under penalties of false statement, alleging attorney misconduct whether or not such alleged misconduct occurred in the actual presence of the court. Complaints against attorneys shall be filed with the statewide bar counsel. Within seven days of the receipt of a complaint, the statewide bar counsel shall review the complaint and process it in accordance with subdivision . . . (2) . . . of this subsection as follows . . .

"(2) refer the complaint to the chair of the Statewide Grievance Committee or an attorney designee of the chair and to a nonattorney member of the committee, and the statewide bar counsel in conjunction with the chair or attorney designee and the nonattorney member shall, if deemed appropriate, dismiss the complaint on one or more of the following grounds . . .

"(F) the complaint alleges misconduct occurring in a Superior Court, Appellate Court or Supreme Court action and the court has been made aware of the allegations of misconduct and has rendered a decision finding

address misconduct occurring in a court action by allowing for the dismissal of a complaint where the complaint alleged misconduct occurring in a court action, and where the court rendered a decision addressing the misconduct. In short, the court has the authority—and jurisdiction—to address attorney misconduct that occurs in a court action. The court rejects [Pattis'] argument that the court can only address misconduct that occurs in the physical presence of the court." (Citations omitted; footnote added; internal quotation marks omitted.)

Pattis acknowledges that the court had the inherent authority to discipline him. See *Disciplinary Counsel* v. *Serafinowicz*, 160 Conn. App. 92, 98, 123 A.3d 1279 ("[t]he Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar" (internal quotation marks omitted)), cert. denied, 319 Conn. 953, 125 A.3d 531 (2015). Pattis maintains, however, that this inherent authority "is subject to constitutional restraint" and that the court infringed on his procedural due process rights in initiating, sua sponte, disciplinary proceedings against him on the basis of conduct that occurred outside of its presence.

As a preliminary matter, we observe that Pattis raises this procedural due process claim for the first time in this writ of error. Pattis contends that this constitutional claim, if unpreserved,[22] is reviewable under *Golding*.

misconduct or finding that either no misconduct has occurred or that the allegations should not be referred to the Statewide Grievance Committee . . . ."

[22] Pattis asserts that this constitutional claim is preserved because he raised it in the motion to dismiss the show cause order. In the motion to dismiss, Pattis contended in relevant part that (1) the show cause order "[did not] comport with due process" because it failed to identify the specific state and federal statutes that he allegedly violated and (2) the court did not cure the defective notice during the August 10, 2022 hearing. Pattis did not raise the discrete claim, now presented in this writ of error, that the court violated his procedural due process rights in commencing, sua sponte, disciplinary proceedings against him to investigate conduct that did not

Pursuant to *Golding*, a plaintiff in error "can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the [plaintiff in error] of a fair trial; and (4) if subject to harmless error analysis, the [defendant in error] has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. . . . The first two steps in the *Golding* analysis address the reviewability of the claim, [whereas] the last two steps involve the merits of the claim." (Emphasis in original; internal quotation marks omitted.) *In re Gabriella M.*, 221 Conn. App. 827, 836, 303 A.3d 319, cert. denied, 348 Conn. 925, 304 A.3d 443 (2023). We conclude that Pattis' unpreserved claim is reviewable, as (1) the record is adequate for review and (2) the claim is of constitutional magnitude alleging the violation of a fundamental right. We further conclude, however, that Pattis' claim fails on the merits under the third prong of *Golding* because he has not demonstrated that the court's actions violated his procedural due process rights.

"Because a license to practice law is a vested property interest and disciplinary proceedings are adversary proceedings of a quasi-criminal nature, an attorney subject to discipline is entitled to due process of law. . . . Due process is inherently fact-bound because due process is flexible and calls for such procedural protections as

occur in its presence. Insofar as Pattis claimed error on the ground that the conduct at issue occurred outside of the court's presence, his claim was limited to challenging the court's reliance on Practice Book § 2-45, which the court cited in the show cause order and which concerns just cause "occur[ring] in the actual presence of the court . . . ." See footnote 13 of this opinion. Pattis is not claiming in this writ of error that the court committed error in relying on § 2-45 or that he received defective notice.

the particular situation demands. . . . The constitutional requirement of procedural due process thus invokes a balancing process that cannot take place in a factual vacuum. . . . Accordingly, [t]he determination of the particular process that is due depends on the nature of the proceeding and the interests at stake. . . . In attorney disciplinary proceedings, two interests are of paramount importance. On the one hand, we must not tie the hands of grievance committees and trial courts with procedural requirements so strict that it becomes virtually impossible to discipline an attorney for any but the most obvious, egregious and public misconduct. On the other hand, we must ensure that attorneys subject to disciplinary action are afforded the full measure of procedural due process required under the constitution so that we do not unjustly deprive them of their reputation and livelihood." (Citations omitted; internal quotation marks omitted.) *Burton* v. *Mottolese*, 267 Conn. 1, 19–20, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073, 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004).

"[In *Mathews* v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)] [t]he United States Supreme Court . . . set forth three factors [which our Supreme Court has followed] to consider when analyzing whether an individual is constitutionally entitled to a particular judicial or administrative procedure: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. . . . Due process analysis requires balancing the government's interest in existing procedures against the risk of erroneous

deprivation of a private interest inherent in those procedures. . . .

"The fundamental requisite of due process of law is the opportunity to be heard . . . [which] must be at a meaningful time and in a meaningful manner. . . . [T]hese principles require that a [litigant] have timely and adequate notice detailing the reasons for [the proposed action], and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally." (Citations omitted; internal quotation marks omitted.) *State* v. *Harris*, 277 Conn. 378, 395–96, 890 A.2d 559 (2006). Whether the court deprived Pattis of his procedural due process rights presents a question of law subject to plenary review. See *Ambrose* v. *Ambrose*, 223 Conn. App. 609, 619, 309 A.3d 305 (2024).

Pattis does not contend that the court deprived him of sufficient notice or of a meaningful opportunity to be heard with regard to the show cause order. Instead, applying the *Mathews* factors, Pattis asserts that, "[i]n order to provide sufficient due process, a court's institution of disciplinary proceedings should . . . [be] limited to conduct that occurs in its presence and not for what a judge might hear or see in the news." We disagree.

With respect to the second *Mathews* factor,[23] Pattis asserts that disciplinary proceedings commenced against an attorney on the basis of a public complaint or inquiry, particularly by the Superior Court, "immediately [jeopardize] the attorney's livelihood" and, when such proceedings are focused on conduct that occurred outside of the court's presence, require investigation

[23] As to the first *Mathews* factor, the parties agree that Pattis has a property interest in his law license. See *Burton* v. *Mottolese*, supra, 267 Conn. 19 ("a license to practice law is a vested property interest" (internal quotation marks omitted)).

and fact-finding. Pattis further contends that the underlying consolidated actions were "highly publicized" and that the show cause order "attracted media attention," such that his "potential discipline became its own national media story before any evidence was put on." Pattis posits that, rather than initiate, sua sponte, disciplinary proceedings against him, the court should have referred the matter to disciplinary authorities, thereby (1) permitting the matter to be investigated privately, "not in public hearings that were part of an already publicized civil case," and (2) providing additional layers of review.

We are not convinced that the court's course of action risked an erroneous deprivation of Pattis' property interest in his law license. The record demonstrates that the court afforded Pattis notice by way of the show cause order and an opportunity to defend his interest by way of the show cause hearing. Notwithstanding the court's comments reflecting that it had learned of the release of the plaintiffs' confidential records to unauthorized individuals through the news, nothing in the record indicates that the disciplinary proceedings were tainted by publicity surrounding the underlying consolidated actions. Moreover, although the court had the option to refer the matter to disciplinary authorities, we do not discern the court's decision to adjudicate the matter itself as placing Pattis' property interest in his law license at risk of erroneous deprivation. See *Burton* v. *Mottolese*, supra, 267 Conn. 28 (concluding that trial court properly initiated disciplinary proceedings against attorney and that Statewide Grievance Committee is not "exclusive tribunal in which attorney misconduct claims may be investigated").

With respect to the third *Mathews* factor, Pattis maintains that the court's ability to refer the matter to disciplinary authorities mitigated any adverse effect on its interests in managing its docket and in protecting the

rights of other parties. We do not agree. The court had a significant interest in immediately adjudicating serious allegations that Pattis had engaged in conduct that led to the release of the plaintiffs' confidential records to unauthorized individuals in violation of the court's protective order. Commencing disciplinary proceedings against Pattis directly, rather than invoking the procedures governing attorney grievance proceedings; see General Statutes § 51-90 et seq.; Practice Book § 2-29 et seq.;[24] enabled the court to inquire promptly into the matter.

In sum, after weighing the *Mathews* factors, we are not persuaded that due process mandates the imposition of a constraint on the Superior Court's inherent authority to regulate and to discipline attorneys by drawing a distinction between conduct that occurred before the court and conduct that transpired outside of its presence. We conclude that the court did not violate Pattis' procedural due process rights in initiating, sua sponte, disciplinary proceedings against him on the basis of conduct that occurred outside of its presence,[25] and, therefore, we further conclude that

[24] "Attorney grievance proceedings are governed by the General Statutes and the rules of practice. See General Statutes § 51-90 et seq.; Practice Book § 2-29 et seq." *Brunswick* v. *Statewide Grievance Committee*, 103 Conn. App. 601, 608, 931 A.2d 319, cert. denied, 284 Conn. 929, 934 A.2d 244 (2007).

[25] Pattis argues that "[t]he present case may be the first time in Connecticut that a Superior Court judge instituted disciplinary proceedings against an attorney because she read or saw a report in the news." In support of his position, Pattis cites several disciplinary cases in which trial courts considered whether to discipline attorneys on the basis of conduct that either (1) the courts observed directly or (2) occurred outside of the courts' presence but was brought to the courts' attention by parties or counsel. See *Burton* v. *Mottolese*, supra, 267 Conn. 6, 28 (court initiated disciplinary proceedings against attorney after opposing counsel, during hearing on motion for sanctions, represented to court that one of purported plaintiffs had not authorized attorney to commence action); *Briggs* v. *McWeeny*, 260 Conn. 296, 303, 796 A.2d 516 (2002) (court initiated disciplinary proceedings against attorney after certain parties informed court, during hearing on application for prejudgment remedy, that attorney had engaged in efforts to suppress and to alter architect's report); *Disciplinary Counsel* v. *Wil-*

Pattis has failed to demonstrate a violation of his constitutional rights as required under the third prong of *Golding*.[26]

II

Pattis next claims that Judge Bellis improperly denied his motion to disqualify her from presiding over the disciplinary proceedings. We are not persuaded.

The following additional procedural history is relevant to our resolution of this claim. In a decision dated

liams, 166 Conn. App. 557, 560, 568, 142 A.3d 391 (2016) (court initiated disciplinary proceedings against attorney on basis of attorney's conduct during trial); *Sowell* v. *DiCara*, 161 Conn. App. 102, 118, 127 A.3d 356 (in adjudicating emergency motion for protective order, court determined that attorney violated Rules of Professional Conduct), cert. denied, 320 Conn. 909, 128 A.3d 953 (2015). These cases do not advance Pattis' contention that, to comport with due process, a trial court may initiate, sua sponte, disciplinary proceedings against counsel *only* when (1) the court observes misconduct in its presence or (2) misconduct that occurred outside of the court's presence is brought to its attention by the parties or counsel. Indeed, adopting Pattis' position would yield absurd results. For instance, pursuant to Pattis' argument, a trial court judge who learns of out-of-court misconduct that affects an ongoing trial, such as witness tampering, would be prohibited from immediately addressing the issue unless it is brought to its attention by a party or counsel. We cannot countenance such a restriction on a court's inherent authority to regulate attorney conduct and to sanction as appropriate.

[26] In the alternative, Pattis requests reversal of the court's judgment pursuant to the plain error doctrine. "The plain error doctrine is based on Practice Book § 60-5, which provides in relevant part: The court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court. . . . The plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . A party cannot prevail under [the] plain error [doctrine] unless [he] has demonstrated that the failure to grant relief will result in manifest injustice." (Internal quotation marks omitted.) *State* v. *Patel*, 194 Conn. App. 245, 253 n.5, 221 A.3d 45 (2019), aff'd, 342 Conn. 445, 270 A.3d 627, cert. denied sub nom. *Patel* v. *Connecticut*, U.S. , 143 S. Ct. 216, 214 L. Ed. 2d 86 (2022). For the same reasons that we reject his claim under the third prong of *Golding*, we conclude that Pattis has not "met the stringent standard for relief pursuant to the plain error doctrine." Id., 253.

December 20, 2019, a reviewing committee of the Statewide Grievance Committee dismissed a complaint filed on June 12, 2019, alleging that Pattis had violated the Rules of Professional Conduct in connection with the execution of a personal affidavit of Jones (Jones affidavit), which Pattis filed in the underlying consolidated actions.[27] The reviewing committee found in relevant part as follows. During a hearing on April 10, 2019, Judge Bellis was made aware that Pattis may have acted improperly with respect to the execution of the Jones affidavit, which (1) was signed in Jones' name by Jones' personal representative, who had a power of attorney, and (2) did not state where it was signed. Pattis self-reported the matter by correspondence dated April 12, 2019, and Judge Bellis referred the matter to the Office of Chief Disciplinary Counsel by correspondence dated April 24, 2019.

In dismissing the grievance complaint, the reviewing committee concluded that the record lacked clear and convincing evidence to substantiate a finding that Pattis had violated the Rules of Professional Conduct. The reviewing committee determined that Pattis' "conduct in connection with the [Jones] affidavit did not rise to the level of an ethical violation, in this instance. . . . [Pattis] acknowledged that he made a mistake in connection with the execution of the [Jones] affidavit. When [Pattis] realized his error, he immediately corrected it [by filing a new affidavit signed by Jones]. We find [Pattis] credible that he made a mistake and had no intent to deceive the court or opposing counsel." The reviewing committee further commented that, although it was dismissing the grievance complaint, it was "critical of [Pattis'] level of diligence in researching how to handle an affidavit involving an attorney-in-fact

[27] On July 22, 2019, a grievance panel found probable cause that Pattis had violated the Rules of Professional Conduct in relation to his handling of the Jones affidavit.

acting under a Texas power of attorney in a Connecticut civil proceeding. It is the opinion of this reviewing committee that [Pattis'] practice was sloppy with regard to the execution of the [Jones] affidavit and that he exercised bad judgment. Further, it was inappropriate not to request the power of attorney document for review."

During the show cause hearing on August 10, 2022, Judge Bellis notified the parties that "in the interest of candor . . . I do intend to handle this matter directly, rather than making a referral to disciplinary authorities." Judge Bellis further stated that she wanted to (1) "go through the history and the background and lay everything out" in light of the "situation" of counsel representing Pattis, who had recently appeared on behalf of Pattis and who, as Judge Bellis observed, was "not necessarily familiar with the entire background here,"[28] and (2) "go into considerable detail regarding prior disciplinary issues in this case" because she "want[ed] [the disciplinary] proceeding[s] to be fair and transparent . . . ." As part of her recitation of this history, Judge Bellis discussed the reviewing committee's dismissal of the June 12, 2019 grievance complaint. Judge Bellis summarized the background of the complaint and quoted portions of the reviewing committee's decision, including the committee's statements that, notwithstanding its determination that Pattis did not violate the Rules of Professional Conduct, (1) it was "critical" of Pattis' level of diligence, (2) his practice was "sloppy," and (3) "he exercised bad judgment."

In his motion to disqualify Judge Bellis, Pattis claimed that "[i]t is prudent, proper and required under the law

[28] Attorney Wesley Robert Mead filed an appearance on behalf of Pattis on August 8, 2022. On the same day, Mead filed a motion for a continuance of the August 10, 2022 hearing on the basis of medical issues. Judge Bellis held the August 10, 2022 hearing; however, to accommodate Mead, she limited the scope of the hearing that day.

for Judge Bellis to be disqualified from hearing this attorney disciplinary proceeding, and for Judge Bellis to proceed is a violation of [his] due process rights." Pattis maintained that (1) Judge Bellis' decision to issue the show cause order could "give rise to the public the improper impression (irrespective of its validity) that the court has improperly chosen sides in litigation," (2) Judge Bellis' comments during the August 10, 2022 hearing (a) reflected that she was "dissatisfied" with the reviewing committee's dismissal of the June 12, 2019 grievance complaint and (b) could "create an improper public perception that [he] may end up being punished not on the merits of these allegations but based on [her] discontent with the [reviewing] committee's prior determination," (3) it would be "troubling" for Judge Bellis to preside simultaneously over "an exceedingly high profile publicized trial" and disciplinary proceedings against him, potentially harming him and the defendants, as well as " 'chill[ing]' " advocacy, and (4) the show cause order left "open the possibility that [he] could have fully complied with the [protective order] but still have violated a federal or state statute governing the release of medical records," in which case (a) compliance with the protective order would be a defense in any ensuing prosecution and (b) Judge Bellis, who had entered the protective order, would "likely be in the position to support the [protective order] . . . ." In denying the motion to disqualify, Judge Bellis stated that "[t]he burden of establishing judicial bias, partiality, or impropriety rests on the movant. The motion is denied as [Pattis] has not met his burden."[29]

[29] Judge Bellis further stated that (1) she would consider the merits of the motion to disqualify notwithstanding that Pattis failed to file the necessary accompanying affidavit or a proper certificate of good faith; see Practice Book § 1-23 ("[a] motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith"); and (2) an evidentiary hearing was not necessary because the facts giving rise to the motion were undisputed.

Pattis asserts that Judge Bellis improperly denied his motion to disqualify her from presiding over the disciplinary proceedings because her "impartiality could reasonably be questioned" in light of her comments during the August 10, 2022 hearing (1) notifying the parties that she would preside over the disciplinary proceedings, rather than refer the matter to disciplinary authorities, and (2) discussing the reviewing committee's dismissal of the June 12, 2019 grievance complaint.

Initially, we address the standard of review applicable to Pattis' claim. Pattis maintains that Judge Bellis' refusal to disqualify herself implicates his due process rights, thereby requiring us to employ plenary review. As our Supreme Court has explained, however, "[t]he United States Supreme Court consistently has held that a judge's failure to disqualify himself or herself will implicate the due process clause only when the right to disqualification arises from *actual bias* on the part of that judge." (Emphasis in original.) *State* v. *Canales*, 281 Conn. 572, 594, 916 A.2d 767 (2007); see also *State* v. *Sumler*, 199 Conn. App. 187, 196–97, 235 A.3d 576 (2020) (citing *Canales* in stating that "[t]he law is clear . . . that the mere appearance of bias is insufficient to implicate a due process violation"), vacated in part on other grounds, 345 Conn. 961, 284 A.3d 982 (2022). Pattis does not assert that Judge Bellis had to be disqualified on the ground of actual bias; indeed, in his principal appellate brief, Pattis cites legal authority for the proposition that "[a] moving party does not need to prove actual bias." We construe the crux of Pattis' claim to be that Judge Bellis should have disqualified herself because her involvement in the disciplinary proceedings would reasonably call into question her impartiality. Thus, Pattis has not presented us with a viable due process claim subject to plenary review.

We proceed to set forth the following relevant legal principles and governing standard of review. "Pursuant

to our rules of practice; see Practice Book § 1-22;[30] a judge should disqualify himself [or herself] from acting in a matter if it is required by rule 2.11 of the Code of Judicial Conduct, which provides in relevant part that [a] judge shall disqualify himself [or herself] . . . in any proceeding in which the judge's impartiality might reasonably be questioned . . . . In applying this rule, [t]he reasonableness standard is an objective one. Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality on the basis of all the circumstances. . . . Moreover, it is well established that [e]ven in the absence of actual bias, a judge must disqualify himself [or herself] in any proceeding in which his [or her] impartiality might reasonably be questioned, because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority. . . . Nevertheless, because the law presumes that duly elected or appointed judges, consistent with their oaths of office, will perform their duties impartially . . . and that they are able to put aside personal impressions regarding a party . . . the burden rests with the party urging disqualification to show that it is warranted. . . . A trial court's ruling on a motion for disqualification is reviewed for abuse of discretion. . . . In determining whether there has been an abuse of discretion, every reasonable presumption should be given in favor of the correctness of the court's ruling. . . . Reversal is

[30] Practice Book § 1-22 provides in relevant part: "(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal. A judicial authority may not preside at the hearing of any motion attacking the validity or sufficiency of any warrant the judicial authority issued nor may the judicial authority sit in appellate review of a judgment or order originally rendered by such authority. . . ."

required only where an abuse of discretion is manifest or where injustice appears to have been done." (Footnote added; internal quotation marks omitted.) *Morton* v. *Syriac*, 196 Conn. App. 183, 202–203, 229 A.3d 1129, cert. denied, 335 Conn. 915, 229 A.3d 1045 (2020).

We reject Pattis' claim that Judge Bellis' statements during the August 10, 2022 hearing discussing the reviewing committee's dismissal of the June 12, 2019 grievance complaint[31] and informing the parties of her decision to conduct the disciplinary proceedings directly are sufficient to cause a reasonable person to question her impartiality. Judge Bellis explained on the record that her recitation of the background of the case, including the reviewing committee's dismissal of the June 12, 2019 grievance complaint, constituted an effort to conduct "fair and transparent" disciplinary proceedings and to accommodate Pattis' counsel, who had recently appeared on behalf of Pattis and who had requested a continuance of the proceedings for medical reasons. Judge Bellis further stated that she was notifying the parties of her intent to preside over the disciplinary proceedings directly "in the interest of candor . . . ." Put simply, on the basis of the record, we cannot conclude that Judge Bellis' impartiality might reasonably be questioned. Accordingly, we conclude that Pattis has failed to demonstrate that Judge Bellis abused her discretion in denying his motion to disqualify.[32]

[31] Pattis also notes that Judge Bellis, in entering the disciplinary order, deemed the reviewing committee's statements criticizing his handling of the Jones' affidavit to be an aggravating factor. Judge Bellis' comments during the August 10, 2022 hearing do not reflect partiality, and we do not discern her reliance on the reviewing committee's statements in her decision to raise the specter of partiality.

[32] Pattis also contends that Judge Bellis violated his procedural due process rights in failing to refer the disciplinary matter to another Superior Court judge because she had become " 'personally embroiled' " with him. To support this assertion, Pattis cites *Mayberry* v. *Pennsylvania*, 400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 2d 532 (1971), in which the United States Supreme Court vacated a judgment of criminal contempt and remanded the matter to be heard by another judge when the original judge, having been subjected

III

Pattis also claims that the trial court improperly determined that he violated the Rules of Professional Conduct. We (1) reject Pattis' claims that the court improperly determined that he violated rules 1.1, 5.1 (b), and 8.4 (4), as well as rule 5.1 (c) in part, but (2) conclude that the court improperly concluded that he violated rules 1.15 (b) and 3.4 (3), as well as rule 5.1 (c) in part.[33]

The court set forth the following additional facts and procedural history in its decision that are relevant to our resolution of Pattis' claim. "Utilizing a database management firm to ensure that discovery materials

to "slanderous remarks" and "vilified" by the defendant, "necessarily [became] embroiled in a running, bitter controversy" and was not "likely to maintain that calm detachment necessary for fair adjudication." Id., 465–66. The court in *Mayberry* concluded that "by reason of the [d]ue [p]rocess [c]lause of the [f]ourteenth [a]mendment [to the United States constitution] a defendant in criminal contempt proceedings should be given a public trial before a judge other than the one reviled by the contemnor." Id., 466. Even if we assume, without deciding, that the rationale of *Mayberry* extends beyond criminal contempt proceedings, the record does not support Pattis' assertion that Judge Bellis had become " 'personally embroiled' " with him. See *Banks* v. *Thomas*, 241 Conn. 569, 600, 698 A.2d 268 (1997) ("judicial recusal is necessary only in the unusual case where the apparent effect of the contemnor's conduct on the judge against whom the contemptuous conduct was levied is such as to indicate that the judge's impartiality or objectivity reasonably may be called into question"). A careful review of the record reveals no remarks or actions by Judge Bellis indicating that she had become entangled personally in a "running, bitter controversy" with Pattis such that her impartiality or objectivity reasonably could be questioned. *Mayberry* v. *Pennsylvania*, supra, 465. Accordingly, we need not address this contention further.

[33] Disciplinary counsel argues that we should decline to review Pattis' claims regarding the court's determinations that he violated rules 1.1, 1.15 (b), 5.1 (b), 5.1 (c), and 8.4 (4) of the Rules of Professional Conduct because they are inadequately briefed. See, e.g., *Colandrea* v. *State Dental Commission*, 221 Conn. App. 597, 620 n.25, 302 A.3d 348 (2023) (inadequately briefed claims are deemed abandoned), cert. denied, 348 Conn. 933, 306 A.3d 475 (2024). We conclude that Pattis' claims as to these particular rules are adequately briefed for our review.

were protected and secure, the plaintiffs, beginning in October of 2021, began a rolling [discovery] production. This rolling production was released every two weeks and continued through June of 2022. Every document that was released was reviewed by one of the plaintiffs' attorneys. All discovery materials were provided to the Jones defendants electronically via link, which could be downloaded. The offices of the plaintiffs' counsel, as well as their vendor, had measures in place to keep the materials secure. Medical records, deposition transcripts, and employment, financial, and professional records were among the records of the plaintiffs that were designated [pursuant to the protective order] as Highly Confidential-Attorneys Eyes Only. The plaintiffs produced over 390,000 pages of discovery materials, approximately 4000 of which were the plaintiffs' medical records.

"The concerns of the court with protecting the plaintiffs' medical and confidential information were made painfully clear to [Pattis] early in the discovery process, when [on July 1, 2021] he filed a motion to depose Hillary Clinton, improperly using information designated as Highly Confidential-Attorneys Eyes Only. Most unusually, [Pattis] filed the motion containing the Highly Confidential-Attorneys Eyes Only information as [a] deposition was taking place. In fact, the motion to depose Clinton was filed during the very first of the plaintiffs' depositions. In ruling on the plaintiffs' motion for sanctions filed in response [on July 6, 2021], the court, on August 5, 2021, entered in part the following order: 'Given the cavalier actions and [wilful] misconduct of [Free Speech Systems, LLC, Infowars, LLC, Infowars Health, LLC, and Prison Planet TV, LLC, which were defendants in the underlying consolidated actions] in filing protected deposition information during the actual deposition, this court has grave concerns that their actions, in the future, will have a chilling effect

on the testimony of witnesses who would be rightfully concerned that their confidential information, including their psychiatric and medical histories, would be made available to the public. The court will address sanctions at a future hearing.' Beginning in June of 2021, both the court and the plaintiffs clearly expressed their concerns with respect to protecting the plaintiffs' mental health and other medical and confidential information.

"In late February of 2022, [Pattis] contacted . . . Reynal, a Texas attorney, regarding Reynal's potential representation of Jones and related defendants in five cases pending in Texas. The expectation was that Reynal would also be working on the three consolidated Connecticut cases, and that the two would collaborate on the Texas and Connecticut cases. In March of 2022, approximately six weeks prior to the then trial date in Texas, Reynal filed an appearance in the Texas Sandy Hook defamation lawsuit brought by Scarlett Lewis and Neil Heslin (Texas case). Reynal was the tenth lawyer for the Jones defendants in the Texas case, initially appearing as cocounsel with Jacquelyn Blott. Blott gave Reynal the files for all five of the Jones defendants' pending Texas cases.

"Reynal continued to communicate with [Pattis], and he requested the text messages produced by the Jones defendants in Connecticut as well as the Jones defendants' Connecticut deposition transcripts. Neither Reynal nor his office ever requested from [Pattis], or from anyone else, the . . . plaintiffs' medical, tax, employment or financial records. Reynal's focus was on preparing for the upcoming Texas trial, which did not require him to review the . . . plaintiffs' records.

"On April 13 [and] 14, 2022, emails were exchanged between [Pattis], Texas attorney . . . Lee, and [prior counsel for the Jones defendants in the underlying consolidated actions, Jay] Wolman, regarding 'Randazza

emails."[34] On April 17, 2022, on the eve of trial in the Texas case, Lee filed a petition for bankruptcy on behalf of [Infowars, LLC, Infowars Health, LLC, and Prison Planet TV, LLC] in the [United States Bankruptcy Court for the Southern District of Texas] (the InfoW bankruptcy case). The plaintiffs' counsel in the Texas and Connecticut Sandy Hook cases filed motions to dismiss the InfoW bankruptcy case, as did the [United States] Trustee. On April 18, 2022, adversary proceedings were filed in the [United States Bankruptcy Court for the District of Connecticut] . . . and the three consolidated Connecticut cases were removed to Bankruptcy Court.

"On May 2, 2022, Lee emailed Wolman and [Marc] Randazza, reporting on the status of the InfoW bankruptcy case, reporting that Reynal and [Shelby] Jordan had provided him with the discovery in the Texas case, and stating that, when he had asked [Pattis] and [his associate Cameron] Atkinson about the Connecticut discovery, Atkinson recommended that Lee contact Wolman and Randazza directly, as the transfer [of the Connecticut discovery] from Wolman and Randazza to [Pattis] and Atkinson was corrupted.[35] Lee asked Wolman to provide him with all the Connecticut discovery 'by and for each side,' in light of the changing number of lawyers representing the Jones defendants and the status of discovery in both Texas and Connecticut. Lee gave no thought as to what the Connecticut discovery would include and, although he asked for everything,

[34] "Marc Randazza is an attorney admitted in Nevada whose application for pro hac vice [admission] in the Connecticut cases was denied by the court on July 7, 2020. Randazza and a Shelby Jordan were copied on the emails."

[35] "Randazza was not counsel of record in the three consolidated Connecticut cases and as such was not authorized to possess the . . . plaintiffs' confidential information. How Randazza improperly came into possession of the materials was not addressed at the show cause hearing and remains an open issue at this time."

he had no need for the . . . plaintiffs' mental health or other medical records.

"Half an hour later, Wolman responded to Lee by email, stating that, on March 28, 2022, he had given Atkinson a new [hard] drive with several hundred gigabytes, which Atkinson confirmed worked.[36] Wolman suggested that Atkinson's office FedEx the hard drive to Lee and noted that Lee would need to get the . . . plaintiffs' recent compliance from '[Pattis'] team.' Six minutes later, Wolman emailed Lee again, copying the same five individuals, including [Pattis] and Atkinson, warning that, in light of th[e] court's protective order, Lee might not be authorized to access the . . . plaintiffs' confidential documents.[37]

"Lee responded to Wolman five minutes later, copying the same five individuals, including [Pattis] and Atkinson, thanking Wolman and confirming that he would 'look into the confidentiality situation in the Connecticut litigation.' A few minutes later, Lee emailed [Adam] Rodriguez, asking him to locate the confidentiality order, and asking [Pattis] and Atkinson if they knew what Wolman was referring to.[38] Shortly thereafter, Lee responded to Wolman's email, confirming

[36] "[Pattis], Jordan, Randazza, Adam Rodriguez (of Lee's firm), and Atkinson were all copied on the email."

[37] "The entirety of the email is as follows:

"Kyung,

"I should also add a caveat (and a word of precaution to [Pattis]) before the drive or other files are sent to you. Under the confidentiality order in the [Connecticut] case[s], I'm not confident you're eligible to receive documents marked by the plaintiffs as Confidential or [Highly Confidential-Attorneys Eyes Only]. As I am not counsel of record, I don't feel comfortable making any decisions that would implicate the order and potentially expose the clients to any liability.

"Sincerely,

"Jay Wolman."

[38] "Atkinson, [Pattis], one Marc Schwartz, [Robert J.] Shannon [who had filed a notice of appearance in the InfoW bankruptcy case], one [Raymond] Battaglia, and Jordan were copied on the email."

that he would follow through with Atkinson and [Pattis]. Later that morning, Rodriguez emailed Lee, (copying Atkinson, [Pattis], [Marc] Schwartz, [Robert J.] Shannon, [Raymond] Battaglia, and Jordan), attaching the Connecticut protective orders and highlighting the Highly Confidential-Attorneys Eyes Only language.

"Neither [Pattis] nor anyone from his firm advised of the existence of the protective order, asked Lee to sign a confidentiality order, or responded to Wolman's warning or Lee's inquiry about the protective order. Similarly, neither [Pattis] nor anyone from his firm informed Lee that they were sending him the . . . plaintiffs' mental health records, medical records, or other such sensitive information. Instead, shortly after this May 2, 2022 email exchange, Lee received at his Houston [Texas] office a white external hard drive in a bubble wrap envelope, along with an undated cover letter from Atkinson to Lee, enclosing the hard drive—the same hard drive that [Pattis] and Atkinson had obtained from Randazza and Wolman. Neither the envelope nor the hard drive was designated or marked in any way as confidential or protected by court order, despite the fact that the hard drive contained the . . . plaintiffs' Highly Confidential-Attorneys Eyes Only medical records and discovery. The cover letter was similarly silent. Lee was unsuccessful in his efforts to download the hard drive.

"On May 6, 2022, the plaintiffs' counsel in both the Texas and Connecticut cases notified Lee of their intention to withdraw their claims against [Infowars, LLC, Infowars Health, LLC, and Prison Planet TV, LLC]. On May 31, 2022, [Pattis] moved to withdraw his and Atkinson's appearances in the Connecticut cases, representing that they had been discharged.[39] On June 1, 2022, the Connecticut cases were remanded back to state

[39] "The motion to withdraw appearance was 'withdrawn' on June 20, 2022."

court. On June 6, 2022, the [United States] Bankruptcy Court for the Southern District of Texas dismissed the InfoW bankruptcy [case] by agreement of the parties, including the [United States] Trustee.

"Sometime between June 1 [and] 15, 2022, at the end of a meeting in [Free Speech Systems, LLC's] conference room in Austin [Texas], Lee handed the hard drive, unmarked, unaltered, and with no envelope, to Reynal.[40] It did not occur to Lee to inform Reynal that the hard drive contained the . . . plaintiffs' Highly Confidential-Attorneys Eyes Only information, and Reynal was not asked to sign any confidentiality agreement. Reynal, concerned with what the Jones defendants had produced in Texas compared to what they had produced in Connecticut, subsequently transferred it to his own internal hard drive system. Despite the fact that the hard drive still contained the . . . plaintiffs' Highly Confidential-Attorneys Eyes Only documents, absolutely no care was taken to safeguard the information or to document the details of the transfer of the hard drive. Lee testified that someone from either Reynal['s] or [Pattis'] law firm asked him to transfer the hard drive to Reynal, and Reynal testified that he either asked for the hard drive or Lee volunteered it. On June 15, 2022, Atkinson emailed Lee, asking Lee to 'make the [hard drive] available' to Reynal. Lee responded by saying that he had already given it to Reynal. A day or two later, at the request of [Pattis'] office, Reynal had the hard drive shipped back to [Pattis].[41] Thus, the . . . plaintiffs' sensitive information, which should have been safeguarded and which was also protected by the court order, was carelessly passed around from one unauthorized person to another, without regard for the

[40] "Like Lee, Reynal was prohibited from possessing the . . . plaintiffs' medical records and other Highly Confidential-Attorneys Eyes Only materials, as he was not an attorney of record in the Connecticut cases."

[41] "Incredibly, both Lee and Reynal deny ever looking at the materials."

protective order, and with no effort to safeguard the . . . plaintiffs' sensitive, confidential documents. The confidential, court-protected medical and other records of the . . . plaintiffs were improperly and unsafely transmitted at the direction of [Pattis] to Lee, and then improperly and unsafely transferred by Lee to Reynal, with [Pattis'] approval.

"On July 6, 2022, [Pattis] filed an application for Reynal to appear pro hac vice in the Connecticut cases. The application was granted on July 20, 2022, with certain restrictions and the requirement that Reynal file an appearance by July 30, 2022. On July 26, 2022, the court granted [Pattis'] oral motion to 'withdraw' Reynal's pro hac admission, before Reynal filed his appearance.

"In the meantime, on July 22, 2022, Reynal's assistant, at his request, emailed Mark Bankston, lead counsel [for the plaintiffs] in the Texas case, with a link to a 'gofile.me' archive containing supplemental production. However, the link that was sent mistakenly provided access to other materials, including Jones' previously undisclosed text messages, as well as the . . . plaintiffs' Highly Confidential-Attorneys Eyes Only medical records and discovery. The directory consisted of an unusually large number of highly disorganized folders and files. Bankston, having concluded that the materials contained the . . . plaintiffs' confidential documents, as well as [Pattis'] work product, stopped his review and emailed Reynal, alerting Reynal that the documents appeared to include records of the . . . plaintiffs and confidential and work product documents.

"The following morning, Reynal responded to Bankston by email, telling him to disregard the link, indicating that a mistake had been made. Reynal instructed his assistant to deactivate the link but did not address with Bankston the documents that Bankston's office had already downloaded.

"On July 24, 2022, Bankston called . . . Mattei . . . alerting him of Reynal's potential disclosure of the . . . plaintiffs' confidential documents. Bankston informed Mattei that, under [rule 193.3 of the Texas Rules of Civil Procedure], the inadvertent production rule, Bankston was prohibited from examining the records until the ten day 'clawback' period in the rule had expired. Bankston reassured Mattei that he had sequestered the records and would delete them once he came across them.[42] On July 28, 2022, Mattei emailed Reynal, stating that Reynal remained bound by the court's protective order, despite Reynal's not having filed an appearance; [Pattis] was copied on this email.

"On July 29, 2022, [Free Speech Systems, LLC] filed for bankruptcy in the [United States Bankruptcy Court for the Southern District of Texas] on the eve of the Connecticut trial, which was scheduled to commence jury selection on August 2, 2022. On August 2, 2022, [the defendants] removed the remnants of the Connecticut] cases to the [United States Bankruptcy Court for the District of Connecticut].

"The ten day clawback period ended on August 1, [2022] and on August 2, [2022] the privilege having been waived, Bankston and his staff reviewed the materials, confirmed that the . . . plaintiffs' confidential documents had been transmitted to them,[43] and deleted them.[44] On August 3, 2022, during his cross-examination

[42] "Under the [inadvertent production] rule, Reynal had ten days from the July 22, 2022 notification by Bankston to identify the material inadvertently produced and assert a privilege."

[43] "Had Reynal identified the . . . inadvertently produced documents and timely asserted a privilege, Bankston would have been required under the [inadvertent production] rule to surrender all copies of all inadvertently produced documents pending a ruling by the court in Texas."

[44] "Pursuant to the sharing provision in the protective order, the plaintiffs' counsel had previously, and properly, shared other documents with Bankston. There was no evidence that the records sent by Reynal to Bankston had all been previously shared with Bankston by the plaintiffs' counsel, which would not matter anyway under the terms of the protective order."

of Jones in the Texas case, and to Reynal's surprise, Bankston used several text messages from Jones' phone contained in the documents inadvertently produced by Reynal. Reynal subsequently reviewed the . . . protective order for the first time. That same day, Mattei emailed Reynal regarding Reynal's disclosure to Bankston and his staff, requesting that Reynal provide him with an itemized list of the documents, the date he received them, the identity of anyone who had access to them, and confirmation of their destruction.[45] An hour after that email, [Pattis] texted Mattei, stating, 'Chris. Give me a call. I learned moments ago that my office may have violated protective order. Norm.'

"After trial ended for the day in Texas, Bankston telephoned Mattei, confirming that he had deleted the . . . plaintiffs' confidential documents. That evening, Reynal emailed Mattei, copying [Pattis], indicating that he was 'deeply troubled' by the 'inadvertent disclosure.' Five minutes later, Mattei responded, copying [Pattis] on the email and reiterating the steps he wanted taken. [Pattis] then texted Mattei, stating, 'Hey. So Texas counsel mistakenly turned over stuff to Texas. Do you recall [one Zimmerman] ever having downloaded [Jones'] text messages?'

"On August 4, [2022] Reynal filed an emergency motion for protective order in Texas regarding the inadvertent production.[46] That morning, Mattei emailed [Pattis], pointing out that Reynal was never counsel of record in the Connecticut cases and as such was barred

[45] "Bankston was not counsel of record in the Connecticut case[s] and was prohibited from receiving the . . . plaintiffs' Highly Confidential-Attorneys Eyes Only records from any of Jones' defense counsel. Bankston was the third lawyer, after Lee and Reynal, to whom the . . . plaintiffs' confidential records were improperly disseminated."

[46] "The motion was denied, as the court found that the privilege had been waived under [rule 193.3 of the Texas Rules of Civil Procedure]. The court gave Reynal [twenty-four] hours within which to designate any documents as confidential, but Reynal did not make any such confidential designations."

from accessing the . . . plaintiffs' confidential information and requesting further details from [Pattis]. [Pattis] emailed Mattei back an hour later, conceding that Reynal was not counsel of record in this case but positing that Reynal was 'working on the defense of this case and related cases' and therefore authorized to access the records. [Pattis] explained that they gave Reynal and Lee a copy of their file, that Lee turned his over to Reynal and that [Pattis] had asked Reynal to return the file to [Pattis]. [Pattis] stated, 'I directed an associate to send our files to the two attorneys who requested them to defend [Jones]. I did not direct the associate to withhold the [plaintiffs' confidential] information. If that is an error, responsibility for it falls on my shoulders.'[47] A few minutes later, [Pattis] forwarded to Mattei an email from Reynal to [Pattis], expressing Reynal's embarrassment and reporting that Bankston represented to the Texas court that he had destroyed the . . . plaintiffs' records. Mattei then informed Reynal by email that, according to [Pattis], the materials that Reynal had been given by Lee were the confidential materials that [Pattis] had given to Lee, and he requested a sworn affidavit from Reynal. Mattei also emailed [Pattis], requesting sworn affidavits from Reynal and Lee. Reynal emailed Mattei, stating that he was returning all the files to [Pattis], that he had not shared the materials with anyone outside his firm, and that, as he was awaiting the verdict in the Texas case, he could not prepare the requested affidavit.

"On August 8, [2022] Mattei emailed Reynal, and then both [Pattis] and [Pattis'] attorney, reiterating his request for a detailed affidavit. Reynal responded by

[47] "[Pattis] also explained that, pursuant to the Texas court order, he was directing that every . . . plaintiffs' deposition, medical record, employment record or any other record provided by the . . . plaintiffs in discovery be designated as confidential and Attorneys Eyes Only. As discussed above, this was never done."

email the following day, indicating that he was now represented by counsel, and Mattei immediately emailed Reynal's counsel, repeating his request for an affidavit." (Footnotes added; footnotes in original; footnotes omitted.)

On the basis of these largely undisputed facts, the court concluded that "[Pattis] was obligated to safeguard the plaintiffs' sensitive information by identifying it as such, and, when transmitting such information to an authorized recipient, informing the recipient accordingly. Furthermore, [Pattis] was bound to comply with the provisions of the protective order, which were clear and unambiguous. [Pattis] was on notice of the need to safeguard the records by virtue of the court's written order stating the court's 'grave concerns' that the . . . plaintiffs' confidential mental health and other medical records would be improperly disseminated, the plaintiffs' counsel's repeated concerns, both orally and in writing, regarding [the plaintiffs'] confidential information, and Wolman's written warning to [Pattis] on March 28, 2022. Despite all of this, [Pattis], incredibly, knowingly released the records to Lee and Reynal. Not only did he improperly release the records to Lee and Reynal, but he did so carelessly, taking no steps to designate the materials as protected by court order, mark them as confidential, or inform the recipients that they were in possession of sensitive and protected documents. Ultimately, [Pattis'] improper dissemination of the records, in conjunction with his failure to maintain the records in a safe and secure manner, led to the . . . plaintiffs' most private information being improperly released to Lee, Reynal, and then Bankston, none of whom were counsel of record in any of the . . . Connecticut cases."

Additionally, on January 11, 2023, the court denied a motion filed by Pattis for a discretionary stay of the disciplinary order. See footnote 16 of this opinion. On

January 23, 2023, in compliance with an order from this court, the trial court issued an articulation of its order denying Pattis' motion for stay. In the articulation, the court stated in relevant part that "[t]he evidence forming the basis for the court's decision was overwhelming and largely incontrovertible. The court detailed at great length the facts giving rise to the misconduct. While [Pattis] continues to minimize his misconduct by referring to it as 'a single instance of misconduct' and a 'singular instance of unauthorized disclosure,' this is simply untrue. The court found misconduct because of [Pattis'] abject failure to label or otherwise identify the hard drive as containing protected medical records, or protected by court order. Additionally, the court found that misconduct occurred when [Pattis] intentionally disseminated the protected documents to . . . Lee . . . who was not counsel of record in this matter. The court also found that it was misconduct for [Pattis] to intentionally distribute the records to . . . Reynal, who was not counsel of record in this matter . . . . [Pattis'] references to a 'mistaken records release' is misleading. The only inadvertent record release was by Reynal to . . . Bankston . . . . Additionally, while [Pattis] argues that the only harm was potential and isolated, the court found that the harm was both actual and potential. The plaintiffs in the underlying litigation were actually harmed when their sensitive records, without their consent, were intentionally transmitted by [Pattis] to Lee and then to Reynal, and then inadvertently transmitted by Reynal, who did not know that he had been given them, to Bankston. . . ."

Before turning to Pattis' claims, we set forth the following legal principles and governing standard of review. "In matters concerning review of the decisions of the trial court regarding violations of the Rules of Professional Conduct, our role is to determine if the facts as found are supported by the evidence contained

in the record and whether the conclusions that follow are legally and logically correct. . . .

"[I]n a matter involving attorney discipline, no sanction may be imposed unless a violation of the Rules of Professional Conduct has been established by clear and convincing evidence. . . . [C]lear and convincing proof denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution. . . . [The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." (Citation omitted; internal quotation marks omitted.) *Sowell* v. *DiCara*, 161 Conn. App. 102, 123–24, 127 A.3d 356, cert. denied, 320 Conn. 909, 128 A.3d 953 (2015).

Insofar as Pattis' claims require us to interpret the Rules of Professional Conduct, we employ plenary review. See *Cohen* v. *Statewide Grievance Committee*, 339 Conn. 503, 513, 261 A.3d 722 (2021) ("[t]he proper construction of the Rules of Professional Conduct presents a question of law over which our review is plenary"). The rules of statutory interpretation apply when we construe the Rules of Professional Conduct. Id.; see also id., 521. "However, our interpretation of the Rules of Professional Conduct, unlike our interpretation of our statutes and rules of practice, is complicated by the fact that the judges of the Superior Court have also formally adopted the commentary to the Rules of Professional Conduct." Id., 513–14. "Because the commentary to the Rules of Professional Conduct has been formally adopted by the judges of the Superior Court, the rules must be read together with their commentary. Thus . . . we are not prevented from considering the commentary, even if we have not found the relevant

language to be ambiguous." Id., 514–15. "[A]lthough we must read the text of the rules and the commentary together, the commentary is not intended to be definitive, authoritative, or limiting but, rather, is intended to be illustrative and to guide our interpretation of the rules." Id., 515; see also Rules of Professional Conduct, scope, p. 3 ("The [c]ommentary accompanying each [r]ule explains and illustrates the meaning and purpose of the [r]ule. . . . The [c]ommentaries are intended as guides to interpretation, but the text of each [r]ule is authoritative. Commentaries do not add obligations to the [r]ules but provide guidance for practicing in compliance with the [r]ules.").

Mindful of the foregoing caveat, we set forth the following principles of statutory interpretation that guide us in interpreting the Rules of Professional Conduct. "The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case . . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case . . . . In seeking to determine that meaning . . . [we] consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . We

recognize that terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise . . . .'' (Internal quotation marks omitted.) *Fernandez* v. *Commissioner of Correction*, 193 Conn. App. 746, 759–60, 220 A.3d 216, cert. denied, 333 Conn. 946, 219 A.3d 376 (2019).

A

First, Pattis claims that the court incorrectly determined that he violated rule 1.1 of the Rules of Professional Conduct. Pattis maintains that, as a matter of law, rule 1.1 is inapplicable to the circumstances of this case. We disagree.

Rule 1.1, titled ''Competence,'' provides: ''A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.'' The commentary to rule 1.1 (1) expounds on the requirement that competent representation necessitates reasonably necessary legal knowledge, skill, thoroughness, and preparation,[48] and (2) discusses an attorney's ability to retain or contract with other lawyers, as well as an attorney maintaining competence. Rules of Professional Conduct 1.1, commentary.

In examining the applicability of rule 1.1, the court stated that, ''[i]n order to competently represent a client involved in civil litigation, an attorney must be able to responsibly engage in the discovery process, which routinely requires an attorney to safely maintain and securely transmit confidential materials such as medical records, personal identifying information such as

[48] With respect to thoroughness and preparation, the commentary states in relevant part that ''[t]he required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. . . .'' Rules of Professional Conduct 1.1, commentary.

Social Security numbers, and account numbers for financial institutions. This obligation to safeguard such sensitive information extends not only to a client's discovery materials but to discovery materials produced by other parties. Additionally, when the court has issued a protective order in a case, a competent attorney must be familiar with its terms. . . .

"At a basic level, attorneys must competently and appropriately handle the discovery of sensitive materials in civil cases. Otherwise, our civil system, in which discovery of sensitive information is customary and routine, would simply collapse. Litigants would understandably be unwilling to turn over the sensitive, confidential or protected information that would be needed to fully and fairly litigate a civil case without the assurance that the attorneys, as officers of the court, would safeguard their information."[49] The court proceeded to determine that Pattis, "by clear and convincing evidence . . . in the course of his representation of the Jones defendants, failed to act competently in the handling of the . . . plaintiffs' confidential records in violation of rule 1.1, exposing [Pattis'] clients to possible sanctions and resulting in harm to the plaintiffs, whose confidential records were distributed without their consent."

Pattis contends that, as a matter of law, the court incorrectly applied rule 1.1 because (1) the rule refers to an attorney's representation of a client and makes no mention of an attorney's duty to other persons, and (2) the conduct at issue concerned the release of the

[49] The court also stated in its analysis concerning Pattis' violation of rule 1.1: "While the [underlying consolidated cases], pending on the court's Complex Litigation Docket, were high profile with significant legal issues and clearly fall within the 'major litigation and complex transactions' contemplated by the [commentary to rule 1.1], the complexity of the case played no part in [Pattis'] misconduct. The obligation to safeguard sensitive records is a basic one."

plaintiffs' confidential records to unauthorized individuals, thereby falling outside of the ambit of the rule. We reject this construction of rule 1.1. Instead, we agree with the court that, to provide competent representation to a client in accordance with rule 1.1, an attorney must responsibly engage in discovery and safeguard sensitive discovery materials, whether provided by the client *or* produced by an opposing party. Indeed, notwithstanding that the court pursued disciplinary action against Pattis, Pattis' conduct ran the risk of subjecting the defendants he represented to sanctions. See *MacCalla* v. *American Medical Response of Connecticut, Inc.*, 188 Conn. App. 228, 240, 204 A.3d 753 (2019) ("Although in some circumstances it may be unduly harsh to impute counsel's transgressions to his client, 'our adversarial system [also] requires that the client be responsible for acts of the attorney-agent whom [he] has freely chosen . . . .' *Thode* v. *Thode*, 190 Conn. 694, 698, 462 A.2d 4 (1983); see *Sousa* v. *Sousa*, 173 Conn. App. 755, 773 n.6, 164 A.3d 702 ('[a]n attorney is the client's agent and his knowledge is imputed to the client' . . .), cert. denied, 327 Conn. 906, 170 A.3d 2 (2017)."); see also *MacCalla* v. *American Medical Response of Connecticut, Inc.*, supra, 239–40 (concluding that court did not abuse its discretion in dismissing claims of certain plaintiffs on basis of counsel's actions); cf. *Herrick* v. *Monkey Farm Cafe, LLC*, 163 Conn. App. 45, 52–53, 134 A.3d 643 (2016) (reversing trial court's judgment of nonsuit rendered on basis of counsel's actions).

In sum, we conclude that, as a matter of law, the court correctly applied rule 1.1. Accordingly, Pattis' claim fails.

B

Second, Pattis claims that the court incorrectly determined that he violated rule 1.15 (b) of the Rules of

Professional Conduct. Pattis contends that, as a matter of law, rule 1.15 (b) does not apply to the facts of this case. We agree.

Rule 1.15, titled "Safekeeping Property," provides in relevant part: "(b) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation." The commentary to rule 1.15 provides in relevant part that "[a] lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. Separate trust accounts may be warranted when administering estate moneys or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices. . . ." Rules of Professional Conduct 1.15, commentary.

With respect to the applicability of rule 1.15 (b), the court stated that, "[w]hile typically this rule is applied to monetary funds and commingling of funds, the rule expressly refers to '[o]ther property'—property other than money—and extends to property of third persons, which would include the plaintiffs." The court proceeded to determine, by clear and convincing evidence,

that Pattis violated rule 1.15 (b) in failing to safeguard the plaintiffs' confidential records.

Pattis asserts that, as a matter of law, the court incorrectly applied rule 1.15 (b) because this provision does not extend to discovery materials, such as the plaintiffs' confidential records, but, rather, concerns the safeguarding of funds and financial information only. Disciplinary counsel argues that rule 1.15 (b), "by its expressed terms, is not limited to funds or financial information." We conclude that discovery materials, like the plaintiffs' confidential records, are not encompassed by rule 1.15 (b).

"[P]roperty," as used in rule 1.15 (b), is not defined in the rules. See Rules of Professional Conduct 1.0 and 1.15. Under such circumstances, we ordinarily "look to the 'commonly approved usage' of the phrase as found in dictionaries. See, e.g., General Statutes § 1-1 (a); *State* v. *Menditto*, 315 Conn. 861, 866, 110 A.3d 410 (2015)." *Cohen* v. *Statewide Grievance Committee*, supra, 339 Conn. 521. Black's Law Dictionary defines "property" to mean (1) "[c]ollectively, the rights in a valued resource such as land, chattel, or an intangible" and (2) "[a]ny external thing over which the rights of possession, use, and enjoyment are exercised." Black's Law Dictionary (11th Ed. 2019) p. 1470; see also Black's Law Dictionary (6th Ed. 1990) p. 1216 (defining property in relevant part to be "commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate"). As the term "property" is broadly defined, the phrase "[o]ther property" in rule 1.15 (b) arguably encompasses discovery materials, such as the plaintiffs' confidential records. The rules of statutory construction, however, instruct that terms "are to be assigned their ordinary meaning, *unless context dictates otherwise* . . . ." (Emphasis

added; internal quotation marks omitted.) *Fernandez* v. *Commissioner of Correction*, supra, 193 Conn. App. 759–60. Reading rule 1.15 as a whole, we construe "[o]ther property" as used in subsection (b) to exclude discovery materials, including the plaintiffs' confidential records.

Initially, we observe that the vast majority of the provisions of rule 1.15, along with the lengthy commentary to the rule, expressly address, in whole or in part, matters that are financial in nature. See Rules of Professional Conduct 1.15 (a) (defining certain terminology used in rule); Rules of Professional Conduct 1.15 (b) (discussing attorney's obligation to safeguard "funds" and "[o]ther property," along with retention and preservation of attendant records); Rules of Professional Conduct 1.15 (c) (discussing parameters of attorney's ability to deposit own funds into client trust account); Rules of Professional Conduct 1.15 (d) (discussing attorney's obligation to deposit legal fees and expenses paid in advance into client trust account); Rules of Professional Conduct 1.15 (e) (discussing attorney's obligations (1) to provide notice "[u]pon receiving funds or other property" in which client or third person has an interest, (2) to promptly deliver "any funds or other property that the client or third person is entitled to receive," and (3) to render full accounting regarding such property upon request); Rules of Professional Conduct 1.15 (f) (discussing attorney's possession of property, which, per commentary, includes funds, in which two or more persons have interests); Rules of Professional Conduct 1.15 (g) (discussing attorney's possession of funds on behalf of client to which third party asserts claim); Rules of Professional Conduct 1.15 (h) and (i) (discussing IOLTA accounts); Rules of Professional Conduct 1.15 (j) (discussing lawyer's maintenance and retention of financial records); Rules of Professional Conduct 1.15 (k) (discussing client trust accounts);

Rules of Professional Conduct 1.15 (*l*) (discussing format of records maintained under rule); Rules of Professional Conduct 1.15 (m) (discussing maintenance of client trust account records specified in rule upon dissolution of law firm or legal professional corporation); Rules of Professional Conduct 1.15 (n) (discussing maintenance of records specified in rule upon sale of law practice); Rules of Professional Conduct 1.15, commentary.

Returning to the language of rule 1.15 (b), the final sentence of the provision requires attorneys to retain and to preserve "[c]omplete records of . . . account funds and other property . . . for a period of seven years after termination of the representation." With regard to the plaintiffs' confidential records, there are no such "[c]omplete records" to retain and to preserve. Additionally, subsection (j) provides in relevant part that "[a] lawyer who practices in this jurisdiction shall maintain current financial records as provided in this [r]ule and shall retain [various enumerated] records for a period of seven years after termination of the representation . . . ." Rules of Professional Conduct 1.15 (j). Considered together, subsections (b) and (j) indicate that the "[c]omplete records" addressed in subsection (b) refer to financial records of the lawyer or law firm, and not discovery materials produced in litigation.

Subsection (e) of rule 1.15 lends additional support to the conclusion that the plaintiffs' confidential records are not encompassed by subsection (b). Rule 1.15 (e) provides: "Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this [r]ule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or

third person, shall promptly render a full accounting regarding such property." It would make little sense to apply this rule to discovery materials. Rather, the rule is clearly intended to capture the receipt of funds or property by the lawyer to be held in escrow. Moreover, the final sentence of subsection (e) refers to an attorney, upon request, rendering a "full accounting" of "any funds or other property that the client or third person is entitled to receive . . . ." Simply put, there can be no "full accounting" as contemplated by the rule vis-à-vis the plaintiffs' confidential records.

We also observe that the commentary to rule 1.15 does not lend support to the proposition that the plaintiffs' confidential records are included within the meaning of "[o]ther property" in subsection (b). The commentary expressly provides guidance on safekeeping (1) moneys and (2) securities. See Rules of Professional Conduct 1.15, commentary. Neither example of "property" is similar in nature to discovery materials produced during litigation.

In sum, we conclude that the court, as a matter of law, incorrectly applied rule 1.15 (b) to encompass the plaintiffs' confidential records. Accordingly, we further conclude that the court improperly determined that Pattis violated rule 1.15 (b).

C

Third, Pattis claims that the court incorrectly determined that he violated rule 3.4 (3) of the Rules of Professional Conduct. Pattis asserts that there was insufficient evidence to support the court's determination. We agree.

Rule 3.4, titled "Fairness to Opposing Party and Counsel," provides in relevant part: "A lawyer shall not . . . (3) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an

assertion that no valid obligation exists . . . .'' Rule 1.0 (g) of the Rules of Professional Conduct defines ''[k]nowingly'' as ''denot[ing] actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.'' The commentary to rule 3.4 provides in relevant part that ''[t]he procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like. . . .'' Rules of Professional Conduct 3.4, commentary.

With regard to rule 3.4 (3), the court stated that it ''flatly rejects [Pattis'] arguments in his [posthearing] brief that any noncompliance with the protective order was an inadvertent mistake or misinterpretation of the protective order. [Pattis], who on August 3, 2022, admitted that his office may have violated the protective order, was unconcerned with the plaintiffs' confidential information, as evidenced by his use of [the] same in his motion to depose Clinton, and by his total disregard of Lee's question to him about the protective order. The court finds by clear and convincing evidence that [Pattis] knowingly disobeyed the protective order by failing to keep the [plaintiffs' confidential] records in a safe and secure manner and by releasing the protected records to Lee and [to] Reynal, both unauthorized recipients, in violation of rule 3.4 (3).''

Pattis asserts that the court incorrectly determined that he violated rule 3.4 (3) because there is not clear and convincing evidence supporting the court's finding that he knowingly violated the protective order. Specifically, Pattis posits that ''[his] conduct and knowledge constitute at most negligence. The email communications [in evidence] show only that he did not inform the recipients of the protective order; they do not show

that he intended to violate it. He also was not aware of Lee's or Reynal's subsequent disclosures. With [his] knowledge and mindset not established, it was incorrect for the trial court to conclude that he violated [rule] 3.4 (3)." Disciplinary counsel argues that the record establishes that Pattis knowingly violated the protective order when, notwithstanding the provisions of the protective order, as well as Wolman's May 2, 2022 email addressed to Lee, with Pattis copied, cautioning about the protective order, Pattis instructed Atkinson to transfer the hard drive containing discovery materials that included the plaintiffs' confidential records. We agree with Pattis.

We iterate that violations of the Rules of Professional Conduct must be established by clear and convincing evidence, which "induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." (Internal quotation marks omitted.) *Sowell* v. *DiCara*, supra, 161 Conn. App. 124. The evidence in the record does not meet this threshold to support the court's finding that Pattis knowingly—that is, with actual knowledge—violated the protective order, which required him to have actual knowledge of the fact that the hard drive transferred by Atkinson to Lee, and later by Lee to Reynal, contained the plaintiffs' confidential information. Both Lee and Reynal testified that they had not requested the plaintiffs' confidential records from Pattis. Although Pattis, in the August 4, 2022 email addressed to Mattei, acknowledged that he (1) "directed an associate to send [their] files" to Lee and to Reynal and (2) "did not direct the associate to withhold the plaintiff[s'] [confidential] information," those statements do not constitute clear and convincing evidence that Pattis had actual knowledge that the discovery materials on the hard drive included the plaintiffs' confidential records. Similarly, Wolman's May 2,

2022 email to Lee, on which Pattis was copied, warning about the protective order, does not show that Pattis knew he was violating the protective order when he directed his associate to send the hard drive to Lee and to Reynal. Moreover, Pattis' August 3, 2022 text message to Mattei, stating that he had "learned moments ago that [his] office may have violated [the] protective order," is not indicative of Pattis having knowingly authorized the release of the plaintiffs' confidential records.

In sum, we conclude that the record does not establish by clear and convincing evidence that Pattis knowingly violated the protective order. Accordingly, we further conclude that the court incorrectly determined that Pattis violated rule 3.4 (3).

D

Fourth, Pattis claims that the court improperly determined that he violated subsections (b) and (c) of rule 5.1 of the Rules of Professional Conduct. We agree in part with Pattis' claim that the court improperly determined that he violated rule 5.1 (c).

Rule 5.1 is titled "Responsibilities of Partners, Managers, and Supervisory Lawyers." Subsection (b) of rule 5.1 provides: "A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." Rule 1.0 (i) defines " '[r]easonable' or 'reasonably,' when used in relation to conduct by a lawyer, [to denote] the conduct of a reasonably prudent and competent lawyer."

Subsection (c) of rule 5.1 provides: "A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) The lawyer is a partner or has comparable managerial authority in the law firm

in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action." Under the rules, the term " 'knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Rules of Professional Conduct 1.0 (g).

The commentary to rule 5.1 provides in relevant part that "[s]ubsection (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4 (1).[50] Subsection (c) (2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[50] Rule 8.4 of the Rules of Professional Conduct provides in relevant part: "It is professional misconduct for a lawyer to: (1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another . . . ."

"Professional misconduct by a lawyer under supervision could reveal a violation of subsection (b) on the part of the supervisory lawyer even though it does not entail a violation of subsection (c) because there was no direction, ratification or knowledge of the violation. . . ." (Footnote added.) Rules of Professional Conduct 5.1, commentary.

In its decision, the court stated that "Atkinson, an associate at [Pattis'] firm and a member of his 'team,' transferred the [plaintiffs'] confidential documents to Lee at the direction of [Pattis]. [Pattis] admitted in his August 4, 2022 email to Mattei that he directed 'an associate' to send their files to 'the two attorneys who requested them' and that he did not instruct the associate to withhold the . . . plaintiffs' confidential information. The court finds by clear and convincing evidence that [Pattis] violated rules 5.1 (b) and 5.1 (c) by directing his associate to transfer the plaintiffs' protected records to Lee and [to] Reynal, both unauthorized recipients, without proper safeguards and without properly notifying Lee and Reynal that the plaintiffs' sensitive and protected information was being transferred. Additionally, the court finds by clear and convincing evidence that [Pattis] violated rule 5.1 (c) as [Pattis], as sponsoring attorney for Reynal, assumed responsibility for Reynal's actions in connection with said records—specifically, Reynal's failure to 'claw back' the records—that [Pattis] had improperly transmitted to Reynal."[51]

[51] The court further stated in its decision: "Reynal was admitted to practice in Connecticut pro hac vice by th[e] court on July 20, 2022, and, at that point, [Pattis], as the sponsoring attorney, assumed full responsibility for the actions of Reynal in connection with the matters. Had Reynal filed an appearance, he would have been counsel of record in these actions and, as such, authorized at that point to receive the plaintiffs' confidential records. In fact, [Pattis] skirted the rules and allowed Reynal access to the confidential records before Reynal filed an appearance—in fact, before [Pattis] even filed the application for pro hac vice. [Pattis] cannot escape responsibility here for Reynal's actions in connection with the plaintiffs' protected records, when [Pattis] was the sponsoring attorney for Reynal, allowed Reynal to

With respect to the court's determination that he violated subsections (b) and (c) of rule 5.1 while exercising supervisory authority over Atkinson,[52] Pattis contends that, as a matter of law, the court incorrectly applied those provisions because Atkinson was never charged with any misconduct. We disagree, as we do not construe rule 5.1 (b) or (c) to require a predicate showing that Atkinson was charged with violating the Rules of Professional Conduct. On the basis of its findings, we construe the court to have determined implicitly on the record before it that, in light of the improper and unsafe transmission of the plaintiffs' confidential records by Atkinson to Lee at Pattis' direction, (1) Pattis did not make reasonable efforts to ensure that Atkinson conformed to the Rules of Professional Conduct for purposes of rule 5.1 (b), and (2) Atkinson violated the rules for purposes of rule 5.1 (c).[53] Thus, we reject Pattis' contention that the court improperly applied rule 5.1 (b) and (c) vis-à-vis his exercise of supervisory authority over Atkinson.

With regard to the court's determination that he violated rule 5.1 (c) in acting as Reynal's sponsoring attorney in Connecticut, Pattis contends that there is insufficient evidence supporting the court's determination because he "did not have any involvement in Reynal's inadvertent disclosure to Bankston" and "[h]e only found out about the potential disclosures after the fact." We agree with Pattis.

As the commentary to rule 5.1 reflects, unlike subsection (b), subsection (c) requires evidence of "direction,

have the records before Reynal was counsel of record, and took no action to retrieve the records following the July 26, 2022 'withdrawal' of Reynal's pro hac admission."

[52] Pattis concedes that he exercised supervisory authority over Atkinson.

[53] We recognize that Atkinson was not accused by Judge Bellis of violating the Rules of Professional Conduct and that he has not had the opportunity to defend personally against any allegation of a violation. Our discussion herein will have no preclusive effect outside the context of these disciplinary proceedings against Pattis.

ratification or knowledge of the [supervised attorney's] violation." Rules of Professional Conduct 5.1, commentary. To support a violation of rule 5.1 (c) (1), the record must demonstrate that Reynal's conduct was (1) ordered by Pattis or (2) ratified by Pattis "with knowledge of the specific conduct . . . ." To support a violation of rule 5.1 (c) (2), the record must establish that Pattis knew of Reynal's conduct "at a time when its consequences [could] be avoided or mitigated but fail[ed] to take reasonable remedial action." There is no evidence demonstrating that Pattis either (1) gave Reynal any directions with regard to the plaintiffs' confidential records, other than requesting that Reynal return the file with the records to him, or (2) ratified Reynal's conduct with knowledge thereof. Moreover, there is not clear and convincing evidence that Pattis knew of Reynal's conduct at a time when the consequences thereof could have been avoided or mitigated by reasonable remedial action. As we explained in part III C of this opinion, there is insufficient evidence to establish that Pattis knowingly authorized the transfer of the plaintiffs' confidential records. Moreover, there is insufficient evidence to demonstrate that Pattis knew, prior to sending the August 3, 2022 text message to Mattei, that the plaintiffs' confidential records had been released. By August 3, 2022, however, as the court found, the ten day clawback period of the inadvertent production rule applicable to the plaintiffs' confidential records in Texas had expired. Accordingly, the evidence is not adequate to support the court's determination that Pattis violated rule 5.1 (c) insofar as he served as Reynal's sponsoring attorney in Connecticut.

In sum, we (1) reject Pattis' claim that the court incorrectly determined that he violated rule 5.1 (b) and (c) insofar as Pattis exercised supervisory authority over Atkinson but (2) conclude that the court improperly determined that Pattis violated rule 5.1 (c) to the

extent that Pattis acted as Reynal's sponsoring attorney in Connecticut.

E

Fifth, Pattis claims that the court improperly determined that he violated rule 8.4 (4) of the Rules of Professional Conduct. Pattis asserts that, as a matter of law, his conduct did not fall within the scope of rule 8.4 (4). We disagree.

Rule 8.4, titled "Misconduct," provides in relevant part: "It is professional misconduct for a lawyer to . . . (4) Engage in conduct that is prejudicial to the administration of justice . . . ." The commentary to rule 8.4 provides in relevant part that, "[a]lthough a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. . . ." Rules of Professional Conduct 8.4, commentary.

With respect to rule 8.4 (4), the court determined "by clear and convincing evidence that [Pattis'] abject failure to safeguard the plaintiffs' sensitive records, as well as [Pattis'] inexcusable disregard and violation of the clear and unambiguous terms of the protective order, which limited access to the plaintiffs' Highly Confidential-Attorneys Eyes Only documents to counsel of record in the Connecticut state court actions, and which limited the use of said records to 'the preparation and trial of this case, all cases consolidated with this case, and in any appeal taken from any order or judgment herein' violated rule 8.4 [(4)]."

Pattis maintains that the court incorrectly applied rule 8.4 (4) because "[t]he potential failures to properly maintain records or to follow court orders can be

ground[s] for misconduct, but neither affects the trial process or [the] court's own administration of justice" as implicated by rule 8.4 (4). He further posits that there is no evidence establishing that he (1) criticized, insulted, or otherwise attacked the court or (2) attempted to hinder or to obstruct the disciplinary investigation, evidence of which would support finding a violation of rule 8.4 (4). This restrictive interpretation of rule 8.4 (4) is untenable.

Rule 8.4 (4) "prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice . . . . It is well established that members of the bar [must] conduct themselves in a manner compatible with the role of courts in the administration of justice." (Internal quotation marks omitted.) *Notopoulos* v. *Statewide Grievance Committee*, 277 Conn. 218, 235, 890 A.2d 509, cert. denied, 549 U.S. 823, 127 S. Ct. 157, 166 L. Ed. 2d 39 (2006). "[R]ule 8.4 (4) casts a wide net over an assortment of attorney misconduct. . . . Furthermore, our sister states have consistently held that an attorney's mere misrepresentation to a court may result in a violation of rule 8.4 (4)." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Henry* v. *Statewide Grievance Committee*, 111 Conn. App. 12, 24, 957 A.2d 547 (2008); see id., 24 n.11 (summarizing cases in which Connecticut courts and courts in other states upheld findings of rule 8.4 (4) violations). In the present case, Pattis' misconduct in permitting the disclosure to unauthorized individuals of the plaintiffs' personal and sensitive information unilaterally imposed a significant cost on the plaintiffs in their attempt to obtain justice in this matter. In short, Pattis' mishandling of the plaintiffs' confidential records falls within the expansive range of misconduct encompassed by rule 8.4 (4).

In sum, we conclude that, as a matter of law, the court correctly applied rule 8.4 (4). Accordingly, we reject Pattis' claim.

IV

Pattis' final claim is that the trial court's disciplinary order suspending him from the practice of law for a period of six months was arbitrary and disproportionate. In light of our conclusion in part III of this opinion that the court improperly determined, in whole or in part, that Pattis violated rules 1.15 (b), 3.4 (3), and 5.1 (c) of the Rules of Professional Conduct, we further conclude that (1) the court's disciplinary order, which was not predicated on Pattis' violation of any particular rule, cannot stand, and (2) we must remand the case for a new hearing on sanctions before a different judge. See General Statutes § 51-183c;[54] Practice Book § 1-22 (a); see also *O'Brien* v. *Superior Court*, 105 Conn. App. 774, 797 and n.27, 939 A.2d 1223 (citing Practice Book § 1-22 (a) in remanding case to trial court for further hearing on certain sanctions after concluding that evidence did not establish that plaintiff in error violated two out of four Rules of Professional Conduct), cert. denied, 287 Conn. 901, 947 A.2d 342 (2008).[55]

The writ of error is granted in part and the case is remanded with direction to vacate the trial court's findings that the plaintiff violated Rules of Professional Conduct 1.15 (b), 3.4 (3), and 5.1 (c) in part, as well as the court's disciplinary order, and for further proceedings consistent with this opinion; the writ of error is denied in all other respects.

In this opinion the other judges concurred.

[54] General Statutes § 51-183c provides: "No judge of any court who tried a case without a jury in which a new trial is granted, or in which the judgment is reversed by the Supreme Court, may again try the case. No judge of any court who presided over any jury trial, either in a civil or criminal case, in which a new trial is granted, may again preside at the trial of the case."

[55] To be clear, our decision to remand the matter to a different judge should not be construed in any manner as calling into question Judge Bellis' impartiality in conducting the disciplinary proceedings against Pattis.

STATE OF CONNECTICUT *v.* HEIDI LEUDERS (AC 45519)

Cradle, Prescott and DiPentima, Js.

Syllabus

Convicted, following a bench trial, of criminal damage of a landlord's property in the first degree, the defendant appealed to this court, claiming that there was insufficient evidence that she intentionally damaged the tangible property of the landlord, R, and that the trial court improperly denied her motion to suppress evidence discovered following a warrantless entry into her residence and statements she made while in police custody. The defendant had entered into a residential lease agreement with R for a single family home. At that time, she was the vice president of a dog rescue company and owned a dog behavioralist company. R was aware of the defendant's businesses and the lease agreement allowed the defendant to keep dogs at the home. One night, the defendant texted R, reporting that the heat to the home was not working and asked R to send someone to repair it. The initial repair person could not fix the heating problem. R asked if she could return with another repair person and the defendant agreed but requested that R not enter the upstairs portion of the home, claiming that the upstairs would be locked and the dogs would be there. When R accompanied another repair person to the home the next day, the doors were unlocked and R went upstairs, observing large amounts of trash, damage to the home, and drug paraphernalia. She called the police, but they did not enter the house that day. She also contacted the defendant, who apologized for the condition of the home and promised to clean it up. R sought permission to enter the house two days later during daylight hours, and the defendant agreed. When R returned to the home, the defendant was not present. R discovered piles of trash everywhere, as well as accumulated feces and urine, and a cage with the skeletal remains of a dog inside. She then left the house and called the police, who arrived promptly to the home. Two police officers and an animal control officer arrived and proceeded to enter the home to ensure no one needed medical attention, because the smell of rotting flesh was emanating from the house. During their time in the home, they found the skeletal remains of five dogs, and, after exiting, they secured the home and notified the detective bureau of the situation. The condition of R's home was so severe that it required a hazmat company to clean the house due to the dogs' remains having rotted in the home. Extensive repairs to the home were required in order for it be habitable again, including, inter alia, the replacement of floors, subfloors, counters, and all appliances, due to the pervasive presence of feces and urine. An arrest warrant was subsequently issued for the defendant for animal cruelty,

and she turned herself in, where she was processed for booking by a police detective, D. After being advised of her rights pursuant to *Miranda* v. *Arizona* (384 U.S. 436), the defendant made comments to D questioning whether she would go to jail or be permitted to own dogs in the future. The defendant was ultimately charged with ten counts of animal cruelty and a single count of criminal damage of a landlord's property. The defendant was acquitted of the charges of animal cruelty, the trial court having found that the state failed to prove beyond a reasonable doubt all the elements of the crime. The court noted that a veterinary pathologist had testified that there was no way to determine how the dogs had died due to their advanced state of decomposition when brought to the laboratory. A detective testified that his investigation revealed that the remains had been in the home for between two and ten months. As to the count of criminal damage to R's property, the court sentenced the defendant to five years of incarceration, execution suspended after fifteen months, and probation for five years with special conditions, which included that she not work with organizations that involve animals and that she complete an animal cruelty prevention program. *Held*:

1. The defendant could not prevail on her claim that there was insufficient evidence that she intentionally damaged the home she was renting to sustain her conviction for criminal damage of a landlord's property in violation of statute (§ 53a-117e), which required a finding of specific intent: on the basis of the totality of the evidence the state produced at trial, and the reasonable inferences drawn from that evidence, the trial court reasonably could have found that the defendant specifically intended to damage R's property and that the damage was not the product of accident or neglect but, rather, was done with specific intent, as the damage was pervasive and severe, due, in large part, to conditions the defendant not only allowed to occur, but left to exist and fester for extended periods of time, and that required the services of a hazmat company to remediate, and it was permissible for the court to infer that the defendant intended the natural consequences of these actions; moreover, the defendant's conduct with respect to the damage, first, by attempting to prevent R from seeing it and, then, by acknowledging the damage and expressing shame and remorse about causing it, demonstrated her consciousness of guilt, which was also indicative of her specific intent.

2. The trial court did not err in denying the defendant's motion to suppress certain evidence obtained as the result of the alleged unlawful and illegal entry into her home and statements she made to the police while in custody:

   a. The trial court did not improperly determine that the warrantless entry into the defendant's residence by the police after R returned to inspect the home was supported by the emergency aid doctrine; although the defendant claimed that there was no evidence of an emergency when

the police entered the home or that whatever emergency had existed had since passed, the court credited the testimony of R and the police officers who entered the home, the police officers having testified that they were concerned that an animal or a person, including the defendant, might have needed immediate assistance inside, and, in light of the circumstances, which included the open door to the home, R's discovery of several dog carcasses, the smell of rotting flesh emanating from the home, uncertainty of the defendant's whereabouts and lack of contact with her, the presence of drug paraphernalia in the home, and evidence of unclaimed packages and a mailbox overflowing with uncollected, unopened mail, it was objectively reasonable for the police officers to believe that an emergency existed when they entered the home.

b. This court declined to review the defendant's unpreserved claim that the statements that she made to D while in police custody were not the result of a knowing and intelligent waiver of her *Miranda* rights and were not voluntary, the record having been inadequate for review of that claim: defense counsel did not argue at the conclusion of the suppression hearing that the defendant failed to knowingly and intelligently waive her *Miranda* rights, instead, counsel argued that the court should suppress her statements because the searches that led to the defendant's arrest were illegal, and the defendant raised for the first time on appeal claims that she was highly emotional, confused, and under the influence of intoxicants, having just been released from a rehabilitation facility; moreover, because defense counsel did not make these arguments to the trial court, the court made no findings regarding waiver, but found only that the defendant had been properly advised of her *Miranda* rights and that the defendant "gave those statements anyway."

c. The defendant could not prevail on her claim that the statements she made to D were not voluntary: there was no evidence of any coercive conduct by D, and the trial court properly credited D's testimony, which was the only testimony about the circumstances surrounding the defendant's statements, that she asked the defendant only basic demographic questions, and, after the defendant had been advised of her *Miranda* rights, the defendant initiated conversation of her own accord and made her statements within that context, and, although the defendant appeared to be tired and sometimes crying, D testified that the defendant did not appear to be intoxicated by alcohol or drugs.

3. The defendant could not prevail on her claim that the trial court violated her right to due process by relying on evidence related to the animal cruelty charges in imposing its sentence without explicitly finding that her conduct with respect to the deaths of the dogs had been proven by a preponderance of evidence: although the court did not explicitly state during sentencing that it found that the defendant's conduct, with respect to the deaths of the dogs, had been proven by a preponderance of the evidence, it was implicit from the court's probation orders and its observations that, even though the court had not found the evidence

proved beyond a reasonable doubt that the defendant was guilty of the animal cruelty charges, it did find that the defendant's conduct with respect to the deaths of the dogs had been proven by at least a preponderance of the evidence; moreover, the evidence regarding the defendant's conduct underlying the acquitted charges had the required minimal indicium of reliability, as many of the facts and circumstances related to the charges of animal cruelty also bore on the offense of criminal damage to a landlord's property, including that there was overwhelming evidence that the deceased dogs had been in the defendant's care, that they had perished two to ten months prior to being discovered in the home from which she ran a dog rescue, and much of the damage to the home, which the defendant was convicted of causing, resulted from the toxins that emanated from the dog's carcasses when they were left to rot; furthermore, the court expressly considered the defendant's actions after the verdict, which included bragging on social media about how she had been found innocent, which the court referenced during sentencing by emphasizing that the defendant had not been found innocent, but was, instead, found not guilty.

Argued November 15, 2023—officially released May 28, 2024

Procedural History

Substitute information charging the defendant with ten counts of the crime of cruelty to animals and one count of the crime of criminal damage of a landlord's property in the first degree, brought to the Superior Court in the judicial district of Fairfield, geographical area number two, where the court, *McShane*, *J.*, denied the defendant's motion to suppress certain evidence; thereafter, the case was tried to the court, *McShane*, *J.*; judgment of guilty of criminal damage of a landlord's property in the first degree, from which the defendant appealed to this court. *Affirmed.*

Norman A. Pattis, with whom, on the brief, was *Kevin M. Smith*, for the appellant (defendant).

Denise B. Smoker, senior assistant state's attorney, with whom, on the brief, were *Joseph T. Corradino*, state's attorney, and *Felicia Valentino*, deputy assistant state's attorney, for the appellee (state).

Opinion

DiPENTIMA, J. The defendant, Heidi Leuders, appeals from the judgment of conviction, rendered following a court trial, of criminal damage of a landlord's property in the first degree in violation of General Statutes § 53a-117e.[1] The defendant makes three claims on appeal. First, the defendant claims that there was insufficient evidence that she intentionally damaged the tangible property of her landlord, Celly Roberts (landlord).[2] Second, she claims that the trial court improperly denied her motion to suppress (a) evidence discovered following a warrantless entry into her residence and (b) statements she made to the police following her arrest. Finally, she claims that, at her sentencing, the court violated her federal and state constitutional rights to due process by considering conduct related to the crimes of which she was acquitted. We disagree with each of the defendant's claims and affirm the judgment of conviction.

The following facts, which are either undisputed or reasonably could have been found by the trial court, and procedural history are relevant to this appeal. On or about September 21, 2017, the defendant entered into a residential lease agreement with the landlord for a single family home at 37 Prince Street in Fairfield (home). At that time, the defendant was the vice president of Bully Breed Rescue, a dog rescue company, and

[1] General Statutes § 53a-117e provides in relevant part: "(a) A tenant is guilty of criminal damage of a landlord's property in the first degree when, having no reasonable ground to believe that he has a right to do so, he intentionally damages the tangible property of the landlord of the premises in an amount exceeding one thousand five hundred dollars. . . .

(d) Criminal damage of a landlord's property in the first degree is a class D felony."

[2] The defendant also argued in her appellate brief that the state presented insufficient evidence to establish that the damage to her landlord's property exceeded $1500. The defendant's counsel withdrew this claim during oral argument before this court.

she owned a dog behavioralist company. The landlord was aware of the defendant's involvement with dogs, and the lease agreement allowed the defendant to keep dogs, reptiles and a snake at the home. The landlord knew that when the tenancy began on October 1, 2017, the defendant would have four dogs living with her at the home; she subsequently became aware that there was a fifth dog living there, which the landlord "had no problem with."

On Sunday, November 11, 2018, the defendant sent a text message to the landlord, reporting that the heat at the home was not working; she asked the landlord to send someone to repair it. The landlord arranged for an emergency plumber to visit the home that evening. The plumber attempted to repair the problem but could not. The defendant was home at that time.

The landlord spoke with the defendant on the telephone later that evening and asked the defendant if she could come to the home with a heating, ventilation, and air conditioning (HVAC) repair person the following day. The defendant agreed and told the landlord that she would leave the exterior door unlocked. The defendant also asked the landlord not to go into the upstairs portion of the home. She said the door to the upstairs would be locked and the dogs would be there. When the landlord and the HVAC repair person went to the home on the evening of November 12, 2018, the exterior door was unlocked, and the interior doors to both the basement and the upstairs were wide open, as well. The home had an open floor plan, and the landlord was able to see "all the way through" the open door to the upstairs.

The landlord and the HVAC repair person went into the basement when they arrived. There, they discovered water damage that had probably occurred a couple of months prior, and the HVAC repair person could not

fix the heating problem. When they finished in the basement, they went to the first floor level. The landlord observed trash and "devastation" through the open door to the upstairs. She also smelled something burning. Concerned about a fire hazard, she walked into the upstairs area and "unplugged the [electric] heater that was sitting on a pile of trash, with the TV on and the fan blowing." She saw drugs and drug paraphernalia, as well.

The landlord stayed in the upstairs area for only a couple of minutes before she left and called the police, reporting that there "were drugs and paraphernalia and devastation in the house." The police responded immediately but did not enter the home that day.

The landlord also sent a text message to the defendant. She testified that in that message she stated that she was "devastated [by] the condition of [her] home," she asked the defendant how she "could . . . have done that," and she asked the defendant about her drug use. The landlord also told the defendant she would return to the home on Wednesday, November 14, 2018, to see it during the daylight hours.[3] The landlord testified that the defendant responded to her text message and stated she "felt terrible," it was "just surface damage," she would clean up the home and "she was trying to seek help" for her "problem."

When the landlord returned to the home on November 14, 2018, "[t]he house was completely open," and the defendant was not there. The landlord went inside and observed "[a] lot of damage. A lot of trash. A lot of unopened dog food. A lot of food containers, needles.

[3] The lease agreement provides in relevant part that "[t]he Landlord shall have the right to enter the Premises during normal working hours by providing at least twenty-four (24) hours notice in order for inspection, [to] make necessary repairs, alterations, or improvements, to supply services as agreed or for any reasonable purpose. . . ."

It was very hard to walk because . . . you couldn't see [the] floor." When the landlord reached the front room, she observed a cage with the skeletal remains of a dog inside. She immediately left, went to a neighbor's home, told him what she had found, and they returned to the home to walk through it together. They discovered more dog carcasses and observed damage throughout the home, including "a lot of teeth marks and scratches in the downstairs bathroom . . . on the baseboards and on the door." They stayed inside for less than five minutes because the "smell was so intense."

When the landlord left the home, she called the police and reported what she had observed.[4] Officers Raymond Quiles and John McGrath and Animal Control Officer Paul Miller, all of the Fairfield Police Department, arrived within minutes. Officer Quiles testified at trial that the house looked run down on the outside and that there was a smell of rotting flesh coming from within.[5] After speaking with the landlord, the three officers entered the home "in case there was anybody in need of assistance inside, or a dead body inside, or anything like that."

The officers were inside the home for between five and fifteen minutes. During that time, they found the remains of five dogs.[6] Officer Miller testified at trial that the dogs were "decomposed almost totally so that they had been there in that situation for a while." The officers also observed "garbage all over the floor" and "a lot of filth." They "established that there was nobody in need of any aid inside, [so they] exited the residence and

[4] The landlord reported that she found four dead dogs in the home. It was determined later that there were five.

[5] Officer Quiles testified that he had "responded to several calls where there were dead bodies on scene. It's a very memorable smell."

[6] There were two dog carcasses on the first floor and three dog carcasses on the second floor. Four of the carcasses were inside crates and the fifth was uncrated.

secured it . . . .” They then notified the detective bureau of the Fairfield Police Department about the situation.

Detective Kevin McKeon arrived at the scene shortly thereafter and started an investigation. He and Detective Frederick Caruso applied for and secured a search warrant for the property. Detective McKeon took photographs of the exterior and interior of the home and then he and his colleagues searched for “deceased animals or anything else that stood out.” Besides the five dog carcasses, there was “tons of garbage, trash, dog feces. Just piles of garbage” inside the home. There was also a terrarium with the carcass of a dead lizard inside. Several windows were open and there were multiple air fresheners hanging on doorknobs.[7]

The officers tagged, separately bagged and removed the remains of the five deceased dogs from the home in accordance with police department protocol. The remains were taken for testing at the Connecticut Veterinary Medical Diagnostic Laboratory the following day, and the pathologic findings reflected in the November 16, 2018 final laboratory reports indicate that each dog “possibly died from lack of food/water.” Detective McKeon’s investigation revealed that the remains had been in the home for two to ten months.[8]

After gathering information and conducting interviews, Detective McKeon prepared a warrant for the defendant’s arrest, which charged her with five counts

[7] Several photographs taken by Detective McKeon were admitted into evidence. Many depict large amounts of garbage and clutter strewn throughout the home. The floors, countertops and furniture were covered with all sorts of debris, including feces. One photograph shows piles of feces completely covering several feet of the living room floor. Exterior photographs depict a front porch cluttered with boxes and unopened packages, and a mailbox overflowing with unopened mail.

[8] Herbert Van Kruiningen, a senior pathologist, testified at trial that when he examined the dogs’ remains, they were “decomposed to an extreme level” and that, based upon what was provided to the laboratory to examine, there was no way to know for certain how the dogs died.

of cruelty to animals in violation of General Statutes (Rev. to 2017) § 53-247 (b) (1),[9] and one count of criminal damage of a landlord's property in the first degree in violation of § 53a-117e. On January 15, 2019, the defendant turned herself in on the arrest warrant. The defendant told Detective Kerry Dalling, who processed her booking, that she "had just gotten out of a rehab facility that day . . . . " After reading the defendant her *Miranda*[10] rights and asking her basic demographic questions, Detective Dalling did not question the defendant.

The landlord had the damage to the home assessed and was advised that she should first have a hazmat company come in "because it was so toxic in there because [the dogs] had decayed for [so] long."[11] The walls needed to be "flushed through with chemicals" before the home could be safely inhabited. In addition, the kitchen cabinets, the countertops, and all the appliances were ruined and needed to be replaced, and all of the flooring and subflooring needed to be removed and replaced because the floors had been saturated with feces and urine. The lowest quote the landlord received for hazmat services alone was $25,000. The landlord did not have the funds to make the necessary repairs and she ultimately lost the home to foreclosure.

On November 29, 2021, the state filed an amended substitute information and charged the defendant with five counts of cruelty to animals in violation of § 53-

[9] General Statutes (Rev. to 2017) § 53-247 (b) provides in relevant part: "Any person who maliciously and intentionally maims, mutilates, tortures, wounds or kills an animal shall, (1) for a first offense, be guilty of a class D felony . . . ."

All references herein to § 53-247 are to the 2017 revision of the statute.

[10] See *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[11] On November 16, 2018, a Fairfield Health Department inspector had similarly advised the landlord to hire a "professional cleaner" because of the unsanitary conditions.

247 (b) (1), five counts of cruelty to animals in violation of § 53-247 (a)[12] and one count of criminal damage of a landlord's property in the first degree in violation of § 53-117e. This case was tried to the court, *McShane*, *J.*, and, on February 9, 2022, it returned its verdict. The court found the defendant not guilty of the ten counts of cruelty to animals and guilty of criminal damage of a landlord's property in the first degree.[13] At the conclusion of the May 4, 2022 sentencing hearing, the court imposed a total effective sentence of five years of imprisonment, execution suspended after fifteen months, and probation, with special conditions, for a period of five years. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

We first address the defendant's claim that there was insufficient evidence to sustain her conviction for crimi-

[12] General Statutes (Rev. to 2017) § 53-247 (a) provides in relevant part: "[A]ny person who . . . tortures, deprives of necessary sustenance, mutilates or cruelly beats or kills or unjustifiably injures any animal, or who, having impounded or confined any animal, fails to give such animal proper care . . . or fails to supply any such animal with wholesome air, food and water . . . or, having charge or custody of any animal, inflicts cruelty upon it or fails to provide it with proper food, drink or . . . abandons it . . . shall, for a first offense, be fined not more than one thousand dollars or imprisoned not more than one year or both . . . ."

[13] Prior to returning its verdict, the court commented: "I think it's important to point out nobody in . . . any criminal trial . . . is ever found innocent. There's no such finding as innocent. . . . At trial, if the state proves all its elements beyond a reasonable doubt, the verdict is guilty. If the state fails to prove each and every element beyond a reasonable doubt, the fact finder is obligated to come back with a verdict of not guilty." It explained that "[t]o prove the first five counts of animal cruelty, the state must prove beyond a reasonable doubt that the defendant did maliciously and intentionally" kill the dogs but that Dr. Herbert Van Kruiningen testified that he could not tell how the dogs died. With respect to the second five counts of animal cruelty, it explained that the state had the burden to prove that the defendant deprived the dogs of necessary sustenance and stated: "It doesn't matter what I think. It doesn't matter what I suspect. What matters is what the state proved beyond a reasonable doubt."

nal damage of a landlord's property.[14] Specifically, she claims that there was insufficient evidence that she intentionally damaged the home. She argues that the evidence "does nothing to prove that the damage was caused by anything other than accident or neglect." In response, the state argues that the photographic evidence of, and testimonial evidence about, extensive damage to the home, coupled with evidence that demonstrated the defendant's consciousness of guilt, amply supports the conclusion that the defendant intentionally damaged her landlord's property. We agree with the state.

We begin our analysis by setting forth our standard of review and the relevant legal principles. "The standard of review we apply to a claim of insufficient evidence is well established. In reviewing the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We also note that the [finder of fact] must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the [finder of fact] to conclude that a basic fact or an inferred fact is true, the [finder of fact] is permitted to consider the

[14] This is the third issue the defendant presents in her appellate brief. We address this issue first because if she prevails on her sufficiency claim, the defendant would be entitled to a directed judgment of acquittal and it would not be necessary to address her other claims. See *State* v. *Moore*, 100 Conn. App. 122, 126 n.2, 917 A.2d 564 (2007).

fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Additionally, [a]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [finder of fact], would have resulted in an acquittal. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [finder of fact's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Thomas S.*, 222 Conn. App. 201, 211–12, 304 A.3d 513 (2023), cert. denied, 348 Conn. 943, 307 A.3d 909 (2024).

"[I]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony . . . and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . . On appeal, we do not retry the facts or pass on the credibility of witnesses." (Internal quotation marks omitted.) *Stilkey* v. *Zembko*, 200 Conn. App. 165, 178, 238 A.3d 78 (2020).

"A tenant is guilty of criminal damage of a landlord's property in the first degree when, having no reasonable ground to believe that [she] has a right to do so, [she] intentionally damages the tangible property of the landlord of the premises in an amount exceeding one thousand five hundred dollars . . . ." General Statutes § 53a-117e (a). In *State* v. *Goode*, 208 Conn. App. 198, 262 A.3d 1028 (2021), this court addressed and rejected a defendant's claim that the state had not presented

sufficient evidence to establish the specific intent required to sustain his conviction for violating § 53a-117e (a). In doing so, this court explained that "§ 53a-117e (a) is a specific intent crime, because it requires, inter alia, that a tenant intentionally damage a landlord's property in an amount exceeding $1500. . . . Intent is a question of fact, the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one. . . . [T]he [trier of fact is] not bound to accept as true the defendant's claim of lack of intent or his explanation of why he lacked intent. . . . Intent may be, and usually is, inferred from the defendant's verbal or physical conduct. . . . Intent may also be inferred from the surrounding circumstances. . . . The use of inferences based on circumstantial evidence is necessary because direct evidence of the accused's state of mind is rarely available . . . . Intent may be gleaned from circumstantial evidence. . . . Furthermore, it is a permissible, albeit not a necessary or mandatory, inference that a defendant intended the natural consequences of his voluntary conduct." (Citation omitted; internal quotation marks omitted.) Id., 202–203. Applying these legal principles in *Goode*, this court concluded that testimonial and photographic evidence of substantial damage throughout the landlord's property[15] allowed the fact finder to reasonably infer that the defendant had the specific intent to cause the damage, as did evidence of the defendant's consciousness of guilt after he did so. Id., 203–204.

As in *Goode*, the testimonial and photographic evidence here depicted substantial damage to the home.

[15] This evidence included "holes in the sheetrock, shattered mirrored closet doors, broken closet doors, burn marks on a butcher block kitchen countertop, a damaged refrigerator, damage to vanities and kitchen cabinets, a broken railing, garbage throughout the property, mold and water damage, cracked and broken tile flooring, broken towel bars, damaged carpeting, hardwood and trim, and animal feces in most of the rooms of the property." (Footnote omitted.) *State* v. *Goode*, supra, 208 Conn. App. 203.

See id., 203. The damage was extensive and so extreme that the landlord was advised that to remediate it, she would first need to employ a hazmat company to address dangerously unsanitary conditions, which included toxins from the remains of the five dogs that had been left to decay in the home for two to ten months, as well as the accumulated feces and urine. The stench was so strong that it could be smelled from the outside, making it difficult to stay inside for longer than a few minutes, and the walls needed to be "flushed through with chemicals" and sanitized before anyone could safely live there again. The lowest quote the landlord received for these services was $25,000.

The physical damage to the home also included "teeth marks and scratches" on baseboards and doors, and water damage in the basement that had existed for months. There was garbage and feces throughout the home, which made it difficult to walk. In fact, there were areas where piles of feces had accumulated and were fully covering several feet of the floor. All the flooring and subflooring had to be removed and replaced because the floors had been saturated with feces and urine, and the kitchen cabinets, the countertops, and all the appliances were ruined and had to be replaced.

In addition, the defendant's conduct after damaging her landlord's property indicated her consciousness of guilt. When the defendant had no choice but to allow the landlord access to the home because the heat was not working, she asked the landlord to stay out of the upstairs area where the extent and severity of the damage was most evident. When the landlord confronted the defendant on November 12, 2018, by text message, about the condition of the home, the defendant acknowledged the damage, replied that she "felt terrible" about it and told the landlord that she would clean it up. When the landlord returned two days later, however,

the defendant was not there, and the home had not been cleaned. Several windows had been left open and there were multiple air fresheners hanging on doorknobs. When the defendant turned herself in on the arrest warrant, she told Detective Dalling that "she [couldn't] believe she did this" and that "she was a terrible person."

On the basis of this evidence, the court reasonably could have inferred that the damage the defendant caused to the home was not the product of accident or neglect but, rather, was done with a specific intent. See *State* v. *Goode*, supra, 208 Conn. App. 203–204. The damage was pervasive and severe, due, in large part, to conditions the defendant not only allowed to occur, but left to exist and fester for extended periods of time. It was permissible, therefore, for the court to infer that the defendant intended the natural consequences of these actions. See *State* v. *Pjura*, 200 Conn. App. 802, 808–809, 240 A.3d 772, cert. denied, 335 Conn. 977, 241 A.3d 131 (2020). Likewise, the defendant's conduct with respect to the damage, first by attempting to prevent the landlord from seeing it, and then by acknowledging the damage and expressing shame and remorse about causing it, demonstrates her consciousness of guilt, which is also indicative of her specific intent. See *State* v. *Goode*, supra, 208 Conn. App. 204; see also *State* v. *Richards*, 196 Conn. App. 387, 403, 229 A.3d 1157 (2020) (fact finder may use consciousness of guilt evidence to draw inference of intent to commit criminal offense), aff'd, 339 Conn. 628, 261 A.3d 1165 (2021).

On the basis of the totality of the evidence the state produced at trial, and the reasonable inferences drawn from that evidence, the court reasonably could have found that the defendant specifically intended to damage her landlord's property. We therefore conclude that the defendant's sufficiency claim is without merit.

II

The defendant next claims that the court improperly denied her motion to suppress certain evidence obtained as a result of "an unlawful and illegal entry and search" of her home and the statements she made to the police while in their custody. Specifically, she argues that the court improperly (1) determined that the November 14, 2018 warrantless entry into her home was justified under the emergency aid doctrine, which is an exception to the warrant requirement[16] and (2) admitted into evidence at trial statements she made while in police custody because she had not knowingly and intelligently waived her *Miranda* rights[17] and

[16] In her appellate brief, the defendant refers to "four illegal searches," three of which allegedly were conducted by the landlord prior to the entry by the police on November 14, 2018, and she claims that "[t]he three initial searches by [the landlord], and subsequent searches by law enforcement, were conducted in violation of the fourth amendment and unjustifiable under the emergency doctrine." It is well settled, however, that "[f]ourth amendment constitutional guarantees against unreasonable searches and seizures apply . . . only to governmental action and do not apply to action by private citizens acting in their private capacity. . . . [A] wrongful search or seizure conducted by a private party does not violate the [f]ourth [a]mendment and . . . such private wrongdoing does not deprive the government of the right to use evidence that it has acquired lawfully. . . . An exception, however, to the general rule that the fourth amendment does not protect against searches by private persons is that the fourth amendment may be invoked where a private person, in light of all circumstances of the case, is acting as the agent or instrument of the state." (Citations omitted; internal quotation marks omitted.) *State* v. *Smith*, 40 Conn. App. 789, 792–93, 673 A.2d 1149, cert. denied, 237 Conn. 915, 675 A.2d 886, cert. denied, 519 U.S. 873, 117 S. Ct. 191, 136 L. Ed. 2d 128 (1996).

There is no dispute that the landlord was a private citizen. Moreover, the trial court found that the landlord was not being used as an agent of the police when she entered the home on the occasions preceding the entry by the police, and the defendant does not challenge that finding on appeal. We conclude, therefore, that the fourth amendment does not apply to the entries by the landlord, and we confine our review of this argument to the single warrantless entry by the police on November 14, 2018.

[17] Pursuant to *Miranda* v. *Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), prior to a custodial interrogation a criminal suspect must "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."

because the statements were not voluntary. We disagree with both of the defendant's arguments and therefore reject this claim.

The following procedural history is relevant to the defendant's claims. On November 2, 2021, the defendant filed a motion to suppress evidence and to dismiss all charges. Therein, she claimed that "any and all" evidence seized or related to "an unlawful and illegal entry and search"[18] of her home on November 14, 2018, and statements she made while in police custody "upon being subject to questioning without being informed of her rights pursuant to *Miranda*," should be suppressed. Prior to the start of trial, the court held a hearing on the defendant's motion to suppress. The landlord and six members of the Fairfield Police Department testified at the hearing and four exhibits were admitted into evidence. The following evidence was adduced.

The landlord and the defendant exchanged several text messages on November 11, 2018, because the heat in the home had not been working for at least two days. The landlord was concerned that the defendant had been living in the home without heat and the defendant responded that "it wasn't that cold in there. Until today." The defendant met with a plumber at the home that evening, but he could not fix the problem. On November 12, 2018, the defendant sent the landlord a text message advising that she left the side door unlocked and that the "[HVAC repair person] can go in the basement. Just tell him not to go upstairs, I have a dog loose." The landlord knew the defendant ran a dog rescue from the home.

When the landlord went with the HVAC repair person to the home on November 12, 2018, there was garbage

[18] The defendant relied upon her right to be free from unreasonable searches and seizures as guaranteed by the fourth, fifth, sixth and fourteenth amendments to the United States constitution and article first, §§ 7, 8 and 9, of the Connecticut constitution in support of this claim.

everywhere and her property was "destroyed." She testified that "[i]t was so disgusting [inside], the smell alone you couldn't even be in there for more than two minutes." She called the police, and Officer Michael Komm responded, but he did not enter the home. The landlord also sent the defendant a text message indicating that she would return to the home on November 14, 2018, and the defendant agreed. The door was open when the landlord arrived on November 14, and, shortly after she entered the home, she found the remains of a dog. She left, returned with a neighbor and together they discovered four additional dog carcasses. The landlord called the police.

Officer Quiles was first to respond to the landlord's November 14, 2018 call, and he met with the landlord when he arrived. She told him there was an extreme amount of garbage, filth, drug paraphernalia, and a few dog carcasses inside. The defendant was not present and, according to Officer Quiles' report, the landlord told him that the defendant had not been staying at the home for one week. He knew the landlord and the defendant had been in recent contact, and that the defendant would not tell the landlord where she was staying.[19]

Officer Quiles described the "smell of rotting flesh coming from within the building" and testified that that is why they entered the home. They also knew there were dead dogs inside the home which, according to Officer Miller's testimony, indicated that "something is wrong, [and that] you have to look at what else is wrong . . . ." Officer Quiles testified that they went in to "make sure that there was nobody inside who is either

[19] The landlord testified that the defendant had been living at the home at least until November 12, 2018, and that the defendant mentioned that she was at a hotel at some point after that. The landlord also testified that she had been speaking with the defendant on November 11 and 12, 2018, and the defendant stopped responding at some point after that.

dying [or] dead . . . .'' Officer McGrath testified that they went in to check for ''anyone in need of medical assistance . . . .'' Officer Miller testified that they were ''going . . . to make sure that there were no injured or suffering animals.'' Officer Quiles waited to enter the home until Officers McGrath and Miller arrived ''because we knew that there were several dogs within the residence. We didn't know if there would be more. [Officer Miller is] better trained . . . to handle it.'' They were inside the home for less than fifteen minutes, they did not take any pictures, nor did they search for or seize anything. Once they ''established that the residence was not occupied, [they] left, secured it, and notified supervisors to contact the detective bureau.'' Detectives were able to obtain a search warrant for the home and subsequently obtained an arrest warrant for the defendant.

Detective Dalling processed the defendant when she turned herself in on the arrest warrant. She read the defendant her *Miranda* rights, the defendant acknowledged that she understood them and signed a ''notice of rights'' that identifies the rights and confirms that ''I have been advised of my rights.'' Detective Dalling testified that the defendant looked tired and was crying at times but that she did not appear to be intoxicated by alcohol or drugs. Besides asking the defendant ''basic standard prisoner questioning [about] demographics,'' Detective Dalling did not question the defendant, but the defendant made statements to her. Detective Dalling testified that ''[the defendant] stated something to the effect of, I don't want to say anything that can be used against me, but I can't believe I did this.'' Detective Dalling recalled that ''[s]he said that she was a horrible person. She can't believe that she did this. She asked me a couple of questions about whether I thought she would go to jail. She asked me if I thought she'd ever be able to own dogs again.''

At the conclusion of the hearing, the court orally denied the defendant's motion. It found the testimony of the landlord and the officers credible and stated that the officers' testimony that they entered the home "because . . . there was a clear smell of rotten flesh from within" was "sincere." The court also found that the officers "were in[side the home] for less than fifteen minutes," that no evidence was seized, no pictures were taken and no field tests of any items were performed during that time. It concluded that "the search [was] lawful . . . ."

With respect to the defendant's statements, the court recounted that defense counsel had "solely argued" that the search was unlawful and that, because of that, the defendant's statements should "be suppressed as well." It found that, "[s]ince I find that the search is lawful, I also find that the statement is . . . admissible." The court also found that there had been a "proper advisement of rights in a custodial situation and that the defendant was advised and gave those statements anyway. I don't have to go into whether or not . . . the statements were in response to any of the questions, but . . . it certainly seems that these were almost volunteered."[20]

We begin by setting forth our standard of review of a trial court's findings and conclusions in connection with a motion to suppress. "As a general matter, the standard of review for a motion to suppress is well settled. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record. . . . [W]hen a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, [however] and the credibility of witnesses

[20] The court previously had stated that "the statements made by the defendant, I'm not quite sure, were in response to any particular questions the officer was asking and I find the statements are admissible."

is not the primary issue, our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence. . . . [W]here the legal conclusions of the court are challenged, [our review is plenary, and] we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision." (Internal quotation marks omitted.) *State* v. *Sayles*, 202 Conn. App. 736, 745–46, 246 A.3d 1010 (2021), aff'd, 348 Conn. 669, 310 A.3d 929 (2024). Moreover, "[i]t is by now well settled that, in order to determine whether the defendant's constitutional rights have been infringed, [w]e review the record in its entirety and are not limited to the evidence before the trial court at the time the ruling was made on the motion to suppress." (Internal quotation marks omitted.) *State* v. *Griffin*, 339 Conn. 631, 687 n.28, 262 A.3d 44 (2021), cert. denied, U.S. , 142 S. Ct. 873, 211 L. Ed. 2d 575 (2022).

We now address the defendant's two challenges to the court's denial of her motion to suppress.

A

The defendant first argues that the court improperly determined that the warrantless entry into her residence by the police on November 14, 2018, was supported by the emergency aid doctrine. She avers that the court's legal conclusions were not logically and legally correct because "there was no evidence of any emergency" when the police entered her residence and "whatever emergency may have once existed had passed." Although she acknowledges that the court found that the officers and the landlord testified credibly, she argues that crediting their testimony did "not produce any valid reasons . . . to believe [that] an emergency existed . . . ." As such, she claims that the

search violated her fourth amendment rights under the United States constitution.[21] The state responds that the "facts found by the trial court support the . . . conclusion that a reasonable officer would have believed that an emergency may have existed inside the defendant's home" and that, consequently, the warrantless entry was justified under the emergency aid doctrine. We agree with the state.

The fourth amendment to the United States constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV. "[A] search conducted without a warrant issued upon probable cause is *per se* unreasonable . . . subject only to a few specifically established and well-delineated exceptions." (Emphasis in original; internal quotation marks omitted.) *State* v. *Blades*, 225 Conn. 609, 617, 626 A.2d 273 (1993). The emergency aid doctrine is one such exception. *State* v. *Curet*, 346 Conn. 306, 321, 289 A.3d 176 (2023).

"[T]he emergency [aid] exception to the warrant requirement allows [the] police to enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. . . . The need to protect or preserve life or [to] avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. . . . As a result, the

[21] Although the defendant cites article first, § 7, of the constitution of Connecticut in her brief, she has abandoned any separate state claim under our state constitution by failing to include a separate state constitutional analysis. See *State* v. *Ebron*, 219 Conn. App. 228, 247 n.8, 295 A.3d 112, cert. denied, 347 Conn. 902, 296 A.3d 840 (2023).

use of the emergency [aid] doctrine evolves outside the context of a criminal investigation and does not involve probable cause as a prerequisite for the making of an arrest or the search for and seizure of evidence. . . . Nevertheless, the emergency [aid] doctrine does not give the state an unrestricted invitation to enter the home. [G]iven the rationale for this very limited exception, the state actors making the search must have reason to believe that life or limb is in immediate jeopardy and that the intrusion is reasonably necessary to alleviate the threat. . . . The police, in order to avail themselves of this exception, must have valid reasons for the belief that an emergency exists, a belief that must be grounded in empirical facts rather than subjective feelings . . . . It is an objective and not a subjective test. The test is not whether the officers actually believed that an emergency existed, but whether a reasonable officer would have believed that such an emergency existed." (Citation omitted; internal quotation marks omitted.) Id., 321–22; see also *State* v. *DeMarco*, 311 Conn. 510, 535, 88 A.3d 491 (2014) (stating that "test for the application of the [emergency aid] doctrine is objective . . . and looks to the totality of the circumstances").

The "emergency aid doctrine has its roots in the police's caretaking function, as opposed to its law enforcement function . . . ." (Internal quotation marks omitted.) *State* v. *Curet*, supra, 346 Conn. 323–24. "The extent of the search is limited, involving a prompt warrantless search of the area . . . [that] is strictly circumscribed by the emergency which serves to justify it . . . ." (Internal quotation marks omitted.) *State* v. *Blades*, supra, 225 Conn. 618. It is the state's burden to demonstrate that a warrantless entry falls within the emergency aid doctrine exception. *State* v. *Curet*, supra, 322–23.

"[I]n reviewing a trial court's ruling on the emergency [aid] doctrine, subordinate factual findings will not be disturbed unless clearly erroneous and the trial court's legal conclusion regarding the applicability of the emergency doctrine in light of these facts will be reviewed de novo. . . . Conclusions drawn from [the] underlying facts must be legal and logical. . . . We must determine, therefore, whether, on the basis of the facts found by the trial court, the court properly concluded that it was objectively reasonable for the police to believe that an emergency situation existed when they entered [the home]." (Internal quotation marks omitted.) *State* v. *DeMarco*, supra, 311 Conn. 518–19. In doing so, "[w]e must defer to the trier of fact's assessment of the credibility of the witnesses . . . . " (Internal quotation marks omitted.) Id., 520.

Significantly, the court credited the testimony of the landlord and the officers who entered the home. Each officer testified that he was concerned that there might be a person and/or animal in need of immediate assistance inside.[22] See id. Moreover, their shared concerns about there being an emergency inside the home were objectively reasonable given the circumstances.

In addition to the smell of rotting flesh coming from the home, there was evidence that the defendant's whereabouts was unknown and that, although she had been living in the home and communicating with the landlord a few days before November 14, 2018, she had stopped responding. Moreover, photographs of the

[22] We are not aware of any Connecticut case that has applied the emergency aid doctrine to animal life. Although we need not decide whether the doctrine extends to animals in this case given the evidence that the police officers were concerned about both human and animal life when they entered the home, we note that courts in other jurisdictions have done so. See, e.g., *Commonwealth* v. *Duncan*, 467 Mass. 746, 752, 7 N.E.3d 469 (stating that "permitting warrantless searches to protect nonhuman animal life fits coherently within the existing emergency aid exception to the warrant requirement"), cert. denied, 574 U.S. 891, 135 S. Ct. 224, 190 L. Ed. 2d 170 (2014).

home's exterior depict unclaimed packages and a mailbox overflowing with uncollected, unopened mail. These factors, coupled with the evidence that the landlord had seen drugs and drug paraphernalia inside the home, support a reasonable belief that the defendant, herself, may have been inside and in need of assistance. See id., 540 ("putrid, overwhelming odor" in connection with other facts, including mail that was "piling up," justified warrantless entry into home under emergency aid doctrine). Moreover, the fact that the door was open on November 14, 2018, when the landlord arrived suggests that someone other than the defendant could have entered the home, was inside and needed assistance.

The defendant claims that the fact that there is no evidence that the landlord "mentioned any signs that anyone else, or any other animal, was in the [defendant's] home or in any sort of danger" should have deterred the police from entry and argues that "[a]ll signs available pointed to a static situation where whatever emergency may have existed in the past was no longer active by the time the police arrived . . . ."

"The reasonable belief standard is a less exacting standard than probable cause . . . and must be applied by reference to the circumstances then confronting the officer, including the need for prompt assessment of sometimes ambiguous information concerning potentially serious consequences. As one court usefully put it, the question is whether the officers would have been derelict in their duty had they acted otherwise." (Citation omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Curet*, supra, 346 Conn. 330–31. When Officer Quiles met with the landlord, she was distressed and visibly upset after finding several dead dogs and extensive damage to the home. Given the circumstances they encountered, it would not have been reasonable for the officers to believe that no emergency existed

simply because the landlord, a lay person in a distressed state, did not "mention any signs" that there was some person or animal who needed assistance.

Also, the landlord had alerted the police officers about several dead dogs inside the home. As Officer Miller testified, this indicates that "something is wrong, [and that] you have to look at what else is wrong . . . ." The knowledge that some dogs were already dead inside does not foreclose the possibility that there may have been other living dogs or their human caretakers inside the home, as the defendant suggests. See *Tamborino* v. *Superior Court*, 41 Cal. 3d 919, 921–23, 719 P.2d 242, 226 Cal. Rptr. 868 (1986) (officer responding to robbery at which injury was reported could, upon finding one injured person, look elsewhere in apartment to determine presence of other victims). Under the totality of the circumstances that confronted the officers on November 14, 2018, it was objectively reasonable for them to believe that an emergency existed when they entered the home and the court properly concluded that their warrantless entry was lawful under the emergency aid doctrine.

B

The defendant next argues that the court should not have admitted into evidence statements that she made to Detective Dalling because (1) they "were not the result of a knowing and intelligent waiver of her *Miranda* rights" and (2) because they were not voluntary. In response, the state contends that (1) because the defendant has raised the waiver argument for the first time on appeal, it is not properly preserved, and (2) the court properly concluded that the defendant's statements to Detective Dalling were made voluntarily and not in response to an interrogation or questioning. We agree with the state.

1

First, the defendant argues that she preserved her claim that she did not knowingly or intelligently waive her *Miranda* rights because she "moved in limine to suppress" her statements and that, "despite clear evidence that [the defendant] . . . who [Detective] Dalling testified had just been released from a drug rehab . . . had not made a knowing waiver of her right to remain silent," the court denied her motion. "It is well known that this court is not bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. . . . The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . [It must] alert the trial court to the specific deficiency now claimed on appeal." (Citation omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Roberts*, 224 Conn. App. 471, 490, A.3d (2024). The defendant argued in her motion to suppress that she had not been informed of her *Miranda* rights, not that she failed to knowingly and intelligently waive them. Defense counsel also did not argue at the conclusion of the suppression hearing that she failed to knowingly and intelligently waive her *Miranda* rights. Rather, counsel argued at that time that the court should suppress her statements because the searches that led to the defendant's arrest were illegal. As such, the court was not apprised of the claim she has raised on appeal and did not decide it. This claim is not preserved. See *State* v. *Hampton*, 293 Conn. 435, 443–44, 988 A.2d 167 (2009) (motion to suppress that did not articulate basis for constitutional challenge defendant raised on appeal did not preserve claim).

Furthermore, the defendant did not request that, in the event we conclude this claim is unpreserved, we review it under the well settled standard set forth in

State v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781,120 A.3d 1188 (2015). Even so, our Supreme Court has stated that, to obtain *Golding* review, "a defendant need only raise that claim in [her] main brief, wherein [she] must present a record that is [adequate] for review and affirmatively [demonstrate] that [her] claim is indeed a violation of a fundamental constitutional right." (Internal quotation marks omitted.) *State* v. *Elson*, 311 Conn. 726, 755, 91 A.3d 862 (2014). Here, however, the defendant has not presented us with a record that is adequate to review her unpreserved waiver claim.

"To be valid, a waiver [of a defendant's *Miranda* rights] must be voluntary, knowing and intelligent. . . . The state has the burden of proving by a preponderance of the evidence that the defendant voluntarily, knowingly and intelligently waived [her] *Miranda* rights. . . . Whether a purported waiver satisfies those requirements is a question of fact that depends on the circumstances of the particular case." (Internal quotation marks omitted.) *State* v. *Stephenson*, 99 Conn. App. 591, 599, 915 A.2d 327, cert. denied, 282 Conn. 903, 919 A.2d 1037 (2007). The defendant argues for the first time on appeal that "*despite clear evidence* that [she]—who . . . had just been released from a drug rehab—had not made a knowing waiver of her right to remain silent, [the court] denied" her motion to suppress the statements she made to Detective Dalling. (Emphasis added.) She argues that the "record is replete with evidence that [the defendant] was highly emotional, confused about her rights and how to act upon them, and under the influence of intoxicants that were still impairing her due to her recent discharge from rehab."[23]

[23] Contrary to the defendant's argument, Detective Dalling testified that the defendant did not appear to be under the influence of alcohol or drugs and the court credited that testimony.

Further, she states that she "even told [Detective] Dalling, prior to making any statements, that she did not 'want to say anything that might be used against her,' " which she argues indicates "both an attempt to invoke her rights and a clear misunderstanding of the contours of the rights [Detective] Dalling had advised her of and how to act upon them."

Because the defendant did not make these arguments to the trial court, however, it made no findings regarding waiver. The court found only that the defendant had been *properly advised* of her *Miranda* rights and that she gave the statements anyway. The court credited Detective Dalling's testimony, and it had no reason to further probe or endeavor to reconcile her testimony that the defendant acknowledged that she understood her rights with her testimony that the defendant was crying and emotional to make the factual determination as to whether that acknowledgment was knowing and voluntary. Nor did the court further probe Detective Dalling's testimony to learn more about the circumstances surrounding the defendant's statement that she did not "want to say anything that might be used against her." Although the defendant argues that this statement indicates "both an attempt to invoke her rights and a clear misunderstanding of [their] contours," it could just as easily mean she understood her rights and made the statements anyway. These are questions of fact that we, as a reviewing court, cannot resolve.

For any *Golding* claim, "[i]t is incumbent upon the [defendant] to take the necessary steps to sustain [her] burden of providing an adequate record for appellate review. . . . Our role is not to guess at possibilities . . . but to review claims based on a complete factual record developed by a trial court. . . . Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the defendant's claims] would be entirely speculative."

(Internal quotation marks omitted.) *State* v. *Brunetti*, 279 Conn. 39, 63, 901 A.2d 1 (2006), cert. denied, 549 U.S. 1212, 127 S. Ct. 1328, 167 L. Ed. 2d 85 (2007). "[W]e will not attempt to supplement or reconstruct the record, or to make factual determinations, in order to decide the defendant's claim." *State* v. *Golding*, supra, 213 Conn. 240. The defendant has not presented us with an adequate record to review her claim that the statements she sought to have suppressed "were not the result of a knowing and intelligent waiver of her *Miranda* rights," and we will not review it.

2

We turn now to the defendant's argument that her statements to Detective Dalling were not voluntary and should not have been admitted because "[d]espite . . . [her] obvious signs of confusion and impairment [while she was in custody], [Detective] Dalling continued to engage [the defendant]," on the one hand, and because the defendant "express[ed] a clear desire not to waive her right against self-incrimination but [Detective] Dalling failed to heed [her] wishes," on the other. In other words, she claims that Detective Dalling improperly coerced her into saying that she was a "horrible person" and admitting she "[could not] believe that she did this."

The following legal principles guide our analysis. "Irrespective of *Miranda*, and the fifth amendment itself . . . any use in a criminal trial of an involuntary confession is a denial of due process of law. . . . The state has the burden of proving the voluntariness of the confession by a fair preponderance of the evidence. . . . [T]he test of voluntariness is whether an examination of all the circumstances discloses that the conduct of law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined . . . . The ultimate test remains . . . [i]s the confession the product of an

essentially free and unconstrained choice by its maker? If it is, if [she] has willed to confess, it may be used against [her]. If it is not, if [her] will has been overborne and [her] capacity for self-determination critically impaired, the use of [her] confession offends due process. . . . The determination, by the trial court, whether a confession is voluntary must be grounded upon a consideration of the circumstances surrounding it. . . . Factors that may be taken into account, upon a proper factual showing, include: the youth of the accused; [her] lack of education; [her] intelligence; the lack of any advice as to [her] constitutional rights; the length of detention; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as the deprivation of food and sleep. . . . Under the due process clause of the fourteenth amendment, however, in order for a confession to be deemed involuntary and thus inadmissible at trial, there must be police conduct, or official coercion, causally related to the confession . . . . In other words, there must be an essential link between [the] coercive activity of the [s]tate, on the one hand, and a resulting confession by a defendant, on the other . . . .'' (Citations omitted; internal quotation marks omitted.) *State* v. *Christopher S.*, 338 Conn. 255, 280–81, 257 A.3d 912 (2021); see also *State* v. *Griffin*, supra, 339 Conn. 670 (''the totality of the circumstances test [for voluntariness] depend[s] [on] a weighing of the circumstances of pressure against the power of resistance of the person confessing'' (internal quotation marks omitted)).

''[As for the scope of our review] we note the established rule that [t]he trial court's findings as to the circumstances surrounding the defendant's interrogation and confession are findings of fact . . . which will not be overturned unless they are clearly erroneous. . . . [A]lthough we give deference to the trial court concerning these subsidiary factual determinations,

such deference is not proper concerning the ultimate legal determination of voluntariness. . . . Consistent with the well established approach taken by the United States Supreme Court, we review the voluntariness of a confession independently, based on our own scrupulous examination of the record. . . . [A]pplying the proper scope of review to the ultimate issue of voluntariness requires us . . . to conduct a plenary review of the record in order to make an independent determination of voluntariness." (Citations omitted; internal quotation marks omitted.) *State* v. *Andrews*, 313 Conn. 266, 322, 96 A.3d 1199 (2014).

Our scrupulous examination of the record, the trial court's factual findings and its credibility determinations to which we defer, lead us to conclude that the statements the defendant made to Detective Dalling were voluntary. Detective Dalling testified that the only questions she asked the defendant after she voluntarily turned herself in were basic demographic questions and that, after she advised the defendant of her *Miranda* rights, the defendant "started making comments" and asking Detective Dalling questions about whether she might go to jail or be permitted to own dogs in the future. In other words, the defendant initiated conversation of her own accord and made her statements within that context. Detective Dalling further testified that, although the defendant looked tired and was crying at times, she did not appear to be intoxicated by alcohol or drugs.

The court credited Detective Dalling's testimony, which was the only testimony about the circumstances surrounding the defendant's statements. "Questions of whether to believe or disbelieve a competent witness are beyond our review. . . . We must defer to the trier of fact's assessment of the credibility of the witnesses that is made on the basis of its firsthand observation

of their conduct, demeanor and attitude." (Internal quotation marks omitted.) *State* v. *DeMarco*, supra, 311 Conn. 520. We thus defer to the trial court's credibility determination and conclude that its derivative findings were not clearly erroneous. There is no evidence of any coercive conduct by Detective Dalling, let alone coercive conduct that could be said to have prompted the defendant's statements. See *State* v. *Christopher S.*, supra, 338 Conn. 280–81. The defendant cannot prevail on her claim that the trial court improperly denied the motion to suppress her statements as involuntarily made.

III

The defendant's final claim is that her sentence violated her right to due process under both the fifth amendment to the United States constitution and article first, § 8, of the Connecticut constitution because the court relied on conduct related to the cruelty to animal charges of which she was acquitted. Although the defendant acknowledges that it is "constitutionally permissible to consider acquitted conduct at sentencing under certain circumstances," she cites to the United States Supreme Court's decision in *United States* v. *Watts*, 519 U.S. 148, 117 S. Ct. 633, 136 L. Ed. 2d 554 (1997), to argue that the sentencing court improperly considered her conduct related to the deaths of the dogs here without *explicitly* finding that her conduct had been proven by a preponderance of the evidence.[24] In

[24] In her appellate brief, the defendant argues more broadly that "it was patently improper for the trial court to consider such acquitted conduct at sentencing without finding it proven by a preponderance of the evidence" and that the court "did not find that such evidence was proven by any standard, let alone a preponderance of the evidence." During oral argument before this court, however, the defendant's counsel argued that, "in the case of acquitted conduct [that] standard should be explicit and it should be stated," and he has invited this court to articulate a "bright-line rule" to that effect.

response, the state argues that the court properly considered the evidence related to the acquitted charges. Specifically, the state asserts that this case is controlled by our Supreme Court's decision in *State* v. *Langston*, 346 Conn. 605, 641, 294 A.3d 1002 (2023), cert. denied, U.S. , 144 S. Ct. 698, 217 L. Ed. 2d 391 (2024), which held that a sentencing judge may properly consider conduct related to a charge of which a defendant was acquitted when it sentences the defendant on other charges, as long as the underlying conduct and evidence considered has a "minimal indicium of reliability" and the sentence imposed is within the permissible statutory range for the conviction.[25] The state argues that, as in *Langston*, the trial court here properly considered the conduct evidence underlying the acquitted charges.[26]

The following additional facts and procedural history are necessary for our resolution of this claim. The court sentenced the defendant on May 4, 2022. At the beginning of that hearing, defense counsel objected to the court's consideration of information contained in the presentence investigation report (PSI) "that relates to the alleged death of the dogs or that relates to the dogs" when sentencing the defendant because that information pertained to "allegations that were never sufficiently proven." The prosecutor responded that it would be impossible to "separate the fact that the dogs were

[25] The maximum sentence of imprisonment for criminal damage of a landlord's property, a class D felony, is five years; General Statutes § 53a-35a (8); and thus, the five year sentence the court imposed was within the permissible statutory range for the conviction. The defendant does not challenge this conclusion on appeal.

[26] Our Supreme Court decided *Langston* after the defendant filed her opening brief in this appeal and, thus, she did not address the decision there. The state filed its brief after *Langston* was decided and addressed the decision at length in that brief. The defendant did not file a reply brief, and, at oral argument before this court, her appellate counsel maintained that *Watts* supports her position.

in the house when they died and caused the damage to the landlord's property . . . [b]ecause they're the mechanism of the damage."

The court stated that it could not consider the convicted charge of criminal damage of a landlord's property "without also considering the crimes . . . [of] which the defendant was acquitted . . . ." The court stated: "The name of the case on point is [*State* v. *Huey*, 199 Conn. 121, 505 A.2d 1242 (1986)] . . . a 1986 Connecticut Supreme Court case. There are many cases that follow along with this.[27] This is not the first case in which somebody was acquitted of a crime and sentencing transpired thereafter. [*Huey*] indicated that the factors that could be considered by a court in sentencing include responsible unsworn out-of-court information relative to the circumstances of the crime and to the convicted person's life and circumstances. Evidence of crimes to which the defendant was indicted but neither tried nor convicted, *evidence bearing on charges for which the defendant was acquitted.* Evidence of counts of [the] indictment that [have] been dismissed by the government and the defendant's demeanor and the lack of veracity and remorse that [was observed] by the court during the course of the trial on the merits. Those are suggestions that our [Supreme] Court has indicated that a sentencing judge can follow.

"I will tell the parties this. The PSI remains the same. *The court is sentencing the defendant on the crime she was convicted of and not on the other ten counts* . . . . [B]ut in this case as [the prosecutor] has [indicated] there is some interplay. We did hear from the landlord and rightfully so, her testimony on sentencing should not be restricted . . . . And we will hear from Attorney

[27] The court also specifically referenced *State* v. *Anderson*, 212 Conn. 31, 561 A.2d 897 (1989), which cited to *Huey*.

Bernhard and I do not want to limit him in what information he provides to the court."[28] (Emphasis added; footnote added.)

The prosecutor described the case as "unique because the mechanism of the damage caused was done by way of [the] animals." She stated that the landlord had lost the home and that her reputation had been "dragged through the mud" as a result of the defendant's actions, and that the defendant had shown no remorse. She recounted that, "after being found not guilty of the animal cruelty charges, [the defendant] went on social media and recorded videos prompting the public with her apparent victory. She may have been found not guilty of those charges but . . . she still stands before, Your Honor, convicted of a felony."

Defense counsel explained that the defendant had no prior criminal record and that she had been a productive citizen until her addiction to drugs. Finally, the defendant, exercising her right of allocution, discussed her addiction, apologized, and acknowledged that her "path forward does not include working with animals."

Prior to the imposition of sentence, the court commented: "[T]here are many things a court can take into consideration when issuing a sentence and they include such thing[s] as [the] relevant background of the defendant. The impact on the victim of course, and the defendant's attitude toward the offense." It specified that it "can certainly look at [the defendant's] actions after the verdict" and that, among other things, it had seen "the defendant's behavior right [afterward]. I saw her bragging about how she was found innocent. I thought I was pretty clear that she was not found innocent. She was found not guilty." It further stated that "*I do not take into consideration . . . the charges of* [*which*]

[28] Attorney Kenneth G. Bernhard is an animal advocate who addressed the court over the defendant's objection.

the defendant was acquitted . . . . However, I do indicate that the death of those five innocent dogs do impact me on this. Because it was their damage [so to] speak. And when I say their damage, it makes it seem like I'm blaming them but the fact that those dogs who died were left to rot. Were left to decay. Were left to diminish in the cages in which an animal should be able to find some comfort, it's horrific.

"So, I have reviewed the PSI. I have reviewed the restitution study. I take into account the totality of all circumstances *including the facts and circumstances related to the offense*. The relevant background of the defendant, including her age, family, history, education, employment, relationships, and the fact that she has no criminal record." (Emphasis added.) The court imposed a total effective sentence of five years of imprisonment, execution suspended after fifteen months, and probation, with special conditions,[29] for a period of five years.

We review this claim with considerable deference to the trial court's exercise of discretion. "A sentencing judge has very broad discretion in imposing any sentence within the statutory limits and in exercising that discretion he may and should consider matters that would not be admissible at trial. . . . Of necessity much of the information garnered by the probation officer will be hearsay. . . . To arrive at a just sentence, a sentencing judge may consider information that would be inadmissible for the purpose of determining guilt . . . evidence of crimes for which the defendant was indicted but neither tried nor convicted . . . evidence bearing on charges for which the defendant was

[29] The special conditions included that the defendant is "not to work or operate for any organization that involves animals" and that she is "to complete the Connecticut Animal Cruelty Prevention and Education Program."

acquitted . . . and evidence of counts of an indictment which has been dismissed by the government. . . .

"Generally, due process does not require that information considered by the trial judge prior to sentencing meet the same high procedural standard as evidence introduced at trial. Rather, judges may consider a wide variety of information. . . . Consistent with due process the trial court may consider responsible unsworn or out-of-court information relative to the circumstances of the crime and to the convicted person's life and circumstance. . . . It is a fundamental sentencing principle that a sentencing judge may appropriately conduct an inquiry broad in scope, and largely unlimited either as to the kind of information he may consider or the source from which it may come. . . . The trial court's discretion, however, is not completely unfettered. As a matter of due process, information may be considered as a basis for a sentence only if it has some minimal indicium of reliability. . . . As long as the sentencing judge has a reasonable, persuasive basis for relying on the information which he uses to fashion his ultimate sentence, an appellate court should not interfere with his discretion." (Citations omitted; internal quotation marks omitted.) *State* v. *Huey*, supra, 199 Conn. 126–27. Moreover, with respect to a court's consideration of evidence related to acquitted conduct, "due process is generally satisfied when the conduct has been established by a preponderance of the evidence." *State* v. *Langston*, supra, 346 Conn. 622, citing *United States* v. *Watts*, supra, 519 U.S. 156.

In the present case, the defendant claims that, when fashioning her sentence, the court abused its discretion by relying on evidence relating to the animal cruelty charges of which she was acquitted. She argues that the court's failure to explicitly find that her conduct related to the deaths of the dogs had been proven by a preponderance of the evidence violated her right to

due process under the federal and state constitutions.[30] Under our Supreme Court's recent decision in *State* v. *Langston*, supra, 346 Conn. 605, this argument fails.

In *Langston*, the defendant claimed that a sentencing court's consideration of the conduct underlying the charge of which he was acquitted violated his federal and state constitutional rights to due process under the fourteenth amendment to the United States constitution and under article first, § 8, of our state constitution. Id., 609. There, the defendant had been charged with assault in the first degree, criminal possession of a firearm, and robbery in the first degree following his arrest in connection with an armed robbery and shooting. He was convicted, after a jury trial, of all but the assault charge. Prior to sentencing the defendant, however, and in addition to reviewing the facts surrounding the charges of which the defendant was convicted, the sentencing court commented at length, and in great detail, regarding the conduct related to the acquitted charge of assault. In doing so, it found that "[t]he evidence was telling and the witnesses credible." Id., 610–11.

Following a comprehensive analysis of the principles governing the constitutionality of sentencing practices in both the federal and state courts, including the "long line of both federal and state precedent [that] has allowed significant latitude for what judges may consider during sentencing and has permitted sentencing courts to consider a wide range of conduct, including conduct related to acquitted charges"; id., 609; our Supreme Court held that a sentencing judge may properly consider conduct related to a charge of which a

[30] The defendant did not separately brief her state constitutional claim and predicates her argument on "the constitutional minimum established by the United States Supreme Court." We therefore deem her state constitutional claim abandoned. See *State* v. *Ebron*, 219 Conn. App. 228, 247 n.8, 295 A.3d 112, cert. denied, 347 Conn. 902, 296 A.3d 840 (2023).

defendant was acquitted when it sentences the defendant on other charges, as long as the underlying conduct and evidence has a " 'minimal indicium of reliability' " and the sentence imposed is within the permissible statutory range for the conviction. Id., 641. The court further concluded that, because the sentencing court's consideration of the conduct underlying the acquitted assault charge and the sentences it imposed satisfied these requirements, the court did not violate the defendant's constitutional rights. Id.

In reaching these conclusions, the court followed the holdings in *Watts*, and its own decision in *Huey*, and it declined to exercise its supervisory authority to impose a rule prohibiting the consideration of acquitted conduct at sentencing. In *Watts*, the United States Supreme Court held that a "verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence." *United States* v. *Watts*, supra, 519 U.S. 157. The court explained: "[A]n acquittal is not a finding of any fact. An acquittal can only be an acknowledgment that the government failed to prove an essential element of the offense beyond a reasonable doubt. Without specific jury findings, no one can logically or realistically draw any factual finding inferences . . . . Thus . . . the jury cannot be said to have necessarily rejected any facts when it returns a general verdict of not guilty." (Citations omitted; internal quotation marks omitted.) Id., 155; see also *State* v. *Langston*, supra, 346 Conn. 617, citing *United States* v. *Watts*, supra, 155–157. In *Huey*, our Supreme Court held that a sentencing court has very broad discretion to consider a wide variety of information as a basis for a sentence, provided that the information "has some minimal indicium of reliability." *State* v. *Huey*, supra, 199 Conn. 127. The court in *Langston* explained that "the rationale supporting *Watts* and

Huey extends to a sentencing court's consideration of acquitted conduct, so long as it meets the requisite standard." *State* v. *Langston*, supra, 622.

Most notably, our Supreme Court in *Langston* concluded that the sentencing court did not violate the defendant's right to due process when it considered the conduct underlying the assault charge for which the defendant had been acquitted, even though the sentencing judge did not "explicitly reference the quantum of evidence" when doing so. Id., 621. It explained: "In the present case, the sentencing court considered the testimony and evidence presented by witnesses at a trial over which it presided. It had sufficient opportunity to observe and judge the credibility of such witnesses, and their sworn testimony is exactly the kind of minimally credible evidence that we anticipate sentencing judges will rely on. In fact, the sentencing judge specifically explained that he found that [t]he evidence was telling and the witnesses [were] credible" (internal quotation marks omitted); id.; and the court determined that the judge's "findings as to the sufficiency of the evidence he relied on was implicit in his explanation." Id.

The same is true in this case. As in *Langston*, the court did not explicitly state when sentencing the defendant that it found the defendant's conduct with respect to the deaths of the dogs had been proven by a preponderance of the evidence. It did, however, expressly consider the defendant's "actions after the verdict" and her "bragging" on social media about how she was found innocent. It responded to that by emphasizing that the defendant "was not found innocent. She was found not guilty." Also, as part of the special conditions the court imposed at sentencing with respect to the defendant's probation, the court ordered that she was "not to work or operate for any organization that involves animals"

and that she was "to complete the Connecticut Animal Cruelty Prevention and Education Program."

It is implicit from these probation orders and its other observations that, even though the court had not found that the evidence proved beyond a reasonable doubt that the defendant was guilty of violating § 53-247 (a) and (b) when it acquitted her of those charges, it did find that the defendant's conduct with respect to the deaths of the dogs had been proven at least by a preponderance of the evidence. See *State* v. *Langston*, supra, 346 Conn. 617 ("an acquittal only indicates the presence of a reasonable doubt as to the defendant's guilt"). Had it not, the court's pointed emphasis on the distinction between "innocent" and "not guilty" and the special conditions it imposed regarding the defendant interacting with animals and undergoing animal cruelty training simply would not follow.[31] We therefore conclude that the court did not violate the defendant's right to due process by considering the conduct underlying the charges of which the defendant was acquitted without *explicitly* referencing the quantum of evidence by which that conduct had been proven.[32] See *State* v. *Langston*, supra, 621.

[31] We note that the court had made similar findings and observations prior to returning its verdict when it explained that "[t]here's no such finding as innocent" and that, "[i]f the state fails to prove each and every element beyond a reasonable doubt, the fact finder is obligated to come back with a verdict of not guilty." It noted that Dr. Herbert Van Kruiningen testified that he could not tell what caused the dogs to die and, with respect to whether the defendant deprived the dogs of necessary sustenance, food and water, the court stated that "[i]t doesn't matter what I think. It doesn't matter what I suspect. What matters is what the state proved beyond a reasonable doubt." As such, the court's findings were implicit from the time it returned the verdict it credited the acquitted conduct evidence even though it did not find that the defendant's guilt was established beyond a reasonable doubt.

[32] Even if it was not implicit in the court's findings and observations that it found that the defendant's acquitted conduct had been proven by a preponderance of the evidence, it remains well established that a reviewing court will not presume error where the record does not reveal what standard of proof the court has applied. Rather, we presume the court used the

Moreover, the evidence regarding the defendant's conduct underlying the acquitted charges had a " 'minimal indicium of reliability.' " Id., 622. The court had presided over both the suppression hearing and the trial where testimonial and documentary evidence regarding the defendant's conduct with respect to the deaths of the dogs had been presented. As in *Langston*, the court had sufficient opportunity to observe and judge the credibility of the witnesses and assess their sworn testimony, which is "exactly the kind of minimally credible evidence that we anticipate sentencing judges will rely on." Id., 621. In fact, the situation is even more compelling here given that the court was also the fact finder at trial and, thus, its credibility determinations and weighing of evidence informed both the returning of the verdict and the defendant's sentencing. See *In re Antonio M.*, 56 Conn. App. 534, 540, 744 A.2d 915 (2000) ("[I]n cases tried before courts, trial judges are the sole arbiters of the credibility of witnesses and it is they who determine the weight to be given specific testimony. . . . It is the quintessential function of the fact finder to reject or accept certain evidence . . . ." (Internal quotation marks omitted.)).

There was overwhelming evidence that the deceased dogs had been in the defendant's care and that they had perished two to ten months prior to being discovered in the home from which she ran a dog rescue. Much of the damage to the home, which the defendant was convicted of causing, resulted from the dogs' carcasses and the toxins that emanated as they were left to rot. In fact, many of the facts and circumstances related to the acquitted charges also bore on the convicted offense. The court's acknowledgment that the "death of those five innocent dogs do impact me on this" and its observation that it "was their damage" from being

appropriate standard in such circumstances. *State* v. *Brown*, 145 Conn. App. 174, 187 n.13, 75 A.3d 713, cert. denied, 310 Conn. 936, 79 A.3d 890 (2013).

"left to rot" reflects this. The court had a reasonable and persuasive basis for considering the evidence regarding the defendant's conduct in relation to the death of the dogs when it sentenced her for criminal damage to her landlord's property, and it did not abuse its broad discretion or violate her due process rights in doing so. See *State* v. *Huey*, supra, 199 Conn. 126–27; see also *State* v. *Langston*, supra, 346 Conn. 620 ("[t]rial judges ought not be reprimanded for acknowledging on the record the impact of information they have gained in the plea bargaining or sentencing processes unless the use of such information confounds reason and a just result" (internal quotation marks omitted)). Thus, the defendant's claims that her due process rights were violated at sentencing must fail.

The judgment is affirmed.

In this opinion the other judges concurred.

LEE DEER ET AL. *v.* NATIONAL GENERAL INSURANCE COMPANY ET AL.
(AC 45509)
(AC 45510)

LEE DEER ET AL. *v.* THE TRAHAN AGENCY, INC., ET AL.
(AC 45511)

Bright, C. J., and Cradle and Palmer, Js.

Syllabus

In each of two cases arising from the nonrenewal of a homeowners insurance policy, the plaintiffs, K and L, appealed from the judgment of the trial court granting the motions for summary judgment filed by the defendant insurance companies, N Co. and C Co., and the defendant insurance agents, T Co. and T. K purchased a homeowners insurance policy with the assistance of T Co. and T that was underwritten by C Co., and the policy named L as an additional insured. The policy was effective for one year, commencing in June, 2019, and terminating in June, 2020. Shortly after the policy was issued, an inspection of the plaintiffs' home

was conducted at the behest of the insurance companies, which revealed that a portion of the exterior of the home was missing siding. B, a home inspection assistant acting on behalf of the insurance companies, sent an email to P, the office manager of T Co., stating that proof of repair was required no later than March, 2020, as a condition of continued coverage. B sent a follow-up email to P in March, 2020, noting that the policy was set to nonrenew due to a lack of response and that proof of the repairs was required by the policy expiration date. The plaintiffs claimed that they did not receive communication from P or anyone else from T Co. regarding the inspection, the necessary repairs, or the risk of nonrenewal. In April, 2020, C Co. sent a notice of nonrenewal to K and T Co. by certified mail. The plaintiffs disputed receipt of this letter, and the United States Postal Service tracking system indicated that, although a notice and two reminders were left at the plaintiffs' address, approximately two weeks after the initial delivery attempt, the letter was deemed unclaimed and was returned to C Co. The policy expired in June, 2020. Less than three weeks later, the plaintiffs' home was destroyed in an accidental fire. When the plaintiffs made a claim under the policy, they learned that it had not been renewed. The plaintiffs commenced the first action alleging, inter alia, that the insurance companies had breached the terms of the policy and had violated the applicable statute (§ 38a-323) by failing to ensure that the plaintiffs received actual notice of nonrenewal and that the insurance agents were negligent in their failure to notify the plaintiffs of the insurance companies' intention not to renew the policy. The trial court granted the insurance agents' motion to strike the count against them. Thereafter, the plaintiffs filed a substitute complaint repleading the negligence count against the insurance agents and further alleging against them a violation of the Connecticut Unfair Trade Practices Act (CUTPA) (§ 42-110a et seq) based on a violation of the Connecticut Unfair Insurance Practices Act (CUIPA) (§ 38a-815 et seq.), and a breach of the implied covenant of good faith and fair dealing. The trial court granted the insurance agents' motion to strike with respect to the CUIPA and CUTPA claims but denied it with respect to the breach of the implied covenant of good faith and fair dealing claim. The plaintiffs then filed a second action against the insurance agents, alleging that they had violated CUIPA and CUTPA by, inter alia, holding themselves out as exclusive agents of A Co., another insurance company, and not fully informing their customers that they were not being insured by A Co.'s homeowners insurance. The two actions were consolidated. Subsequently, the trial court granted the motion for summary judgment filed by the insurance companies in the first action and the motions for summary judgment filed by the insurance agents in the first action and the second action, and the plaintiffs filed three separate appeals with this court. *Held*:

1. The trial court properly granted the insurance companies' motion for summary judgment in the first action:

a. The plaintiffs' claim that C Co.'s mailing of the notice of nonrenewal was insufficient to comply with the notice requirements of § 38a-323 was not persuasive: § 38a-323 (a) (1) plainly provides that an insurer could send by registered or certified mail *or* could deliver to the insured notice of its intention not to renew, and the plaintiffs' interpretation of the statute requiring actual notice would render meaningless the language affording the insurer the option to send the notice and specifying the manner in which it could be sent; moreover, § 38a-323 (c), which refers to an insurer's failure to "provide" the insured with the required notice of nonrenewal, was required to be read in the context of the entire statute and could not logically or reasonably be construed to impose a different or additional notice obligation on the insurance companies than that required under § 38a-323 (a) (1); furthermore, in light of the plain and straightforward language of § 38a-323, this court declined to consider the legislative history of the statute, which the plaintiffs claimed supported their assertion that actual notice of nonrenewal was required.

b. C Co. did not breach the terms of the insurance policy by failing to provide the plaintiffs with actual notice of nonrenewal: the policy provision governing nonrenewal did not require actual notice but, rather, stated that written notice could be delivered *or* mailed, which requirement was fully consistent with the notice obligations of § 38a-323; moreover, the interpretation of the policy advocated by the plaintiffs requiring actual notice ignored the policy language advising the plaintiffs that written notice could be mailed.

c. N Co. was entitled to summary judgment because there was no privity of contract between the plaintiffs and N Co.: there was no dispute that the plaintiffs' policy was underwritten by C Co. and that there was no privity between the plaintiffs and N Co., and, although the evidence may have suggested that N Co. had some possible involvement in the processing of the policy or some affiliation with C Co., the plaintiffs provided no legal authority for the proposition that such involvement could form the basis for liability under either § 38a-323 or the insurance policy; moreover, even if N Co. had played a role in the issuing, underwriting, or processing of the policy, such that its alleged conduct could have potentially rendered it liable to the plaintiffs, it would have been entitled to summary judgment for the same reasons that C Co. was entitled to summary judgment.

2. The trial court properly granted the insurance agents' motions for summary judgment in both the first and the second actions:

a. The trial court properly granted the insurance agents' motion for summary judgment in the first action with respect to the plaintiffs' common-law negligence claim: the plaintiffs' contention on appeal that the insurance agents had a duty to notify them of the inspection results following receipt of the same and that such duty was separate from the duty that the insurance agents allegedly owed to provide notice of the impending nonrenewal of the insurance policy was unpreserved, as it

was not properly raised in the plaintiffs' operative complaint, in their trial court memoranda, or at the hearing on the motions for summary judgment, and, accordingly, this court declined to review the claim; moreover, the trial court properly concluded that the insurance agents had no duty to provide notice of nonrenewal to the plaintiffs because the agency relationship between the parties terminated on procurement of the policy, as the plaintiffs failed to adduce evidence sufficient to give rise to a factual issue regarding their claim that a relationship existed between the parties that imposed on the insurance agents an ongoing duty of care to the plaintiffs.

b. The trial court properly granted the insurance agents' motion for summary judgment in the first action with respect to the issue of whether they complied with the notice requirements of § 38a-323: this court did not need to decide whether the insurance agents were acting as agents of the insurance companies for purposes of § 38a-323 because, under the statute, notice could be provided by either the insurer or its agent, and this court determined that the insurance companies complied with § 38a-323 by mailing the notice of nonrenewal to K.

c. The trial court properly granted the insurance agents' motion for summary judgment in the second action with respect to the plaintiffs' claim alleging violations of CUIPA and CUTPA: although the plaintiffs' evidence established an ascertainable loss, namely, the damages arising from the loss of their home after the insurance policy was not renewed, they failed to raise a genuine issue of material fact with respect to causation of harm, as they failed to provide any evidence or explanation as to how being insured by C Co. instead of A Co. was a substantial factor in that loss.

Argued October 4, 2023—officially released May 28, 2024

Procedural History

Action, in the first case, to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of New London, and transferred to the judicial district of Hartford, and action, in the second case, to recover damages for, inter alia, violation of the Connecticut Unfair Insurance Practices Act, and for other relief, brought to the Superior Court in the judicial district of Hartford, where the cases were consolidated and transferred to the Complex Litigation Docket; thereafter, the court, *Schuman*, *J.*, granted the motion to strike filed by the defendant The Trahan Agency, Inc., et al. in the first case; subsequently, the court, *Schuman*, *J.*, granted in part the

motion to strike filed in the first case by the defendant The Trahan Agency, Inc., et al. with respect to the plaintiffs' substitute complaint; thereafter, in each case, the court, *Noble*, *J.*, granted the defendants' motions for summary judgment, denied the plaintiffs' motions for summary judgment, and rendered judgment thereon, from which the plaintiffs filed three separate appeals with this court. *Affirmed.*

Joseph M. Barnes, with whom, on the brief, were *Robert I. Reardon, Jr.*, and *Kelly E. Reardon*, for the appellants (plaintiffs).

Lee S. Siegel, for the appellees in Docket No. 45509 (named defendant et al.).

Cara D. Joyce, with whom, on the brief, was *Robert W. Cassot*, for the appellees in Docket Nos. 45510 and 45511 (defendant The Trahan Agency, Inc., et al.).

Opinion

PALMER, J. These three appeals involve two consolidated actions arising from the nonrenewal of a homeowners insurance policy. The plaintiffs, Lee Deer and Keleen Deer, appeal from the judgments of the trial court granting the motions for summary judgment filed by the defendant insurance companies, National General Insurance Company (National General) and Century-National Insurance Company (Century-National) (collectively, insurance companies), and the defendant insurance agents, Kevin Trahan and The Trahan Agency, Inc. (collectively, Trahan defendants).[1] On appeal, the plaintiffs claim, among other things, that the court

[1] The trial court also denied the motions for summary judgment filed by the plaintiffs against each of the defendants. Because the court's reasoning with respect to both the plaintiffs' and the defendants' motions for summary judgment is identical, and because the court's decision granting the defendants' summary judgment motions necessarily resolves the plaintiffs' motions against them, we refer hereinafter only to the defendants' motions for summary judgment.

improperly granted the defendants' motions because, on the basis of the undisputed facts, the defendants failed as a matter of law to provide them with adequate notice of the nonrenewal of their policy. We affirm the judgments of the trial court.

The record reveals the following undisputed facts and procedural history. The plaintiffs own a home located at 52 Gurley Road in Waterford. Keleen Deer, with assistance from The Trahan Agency, Inc., purchased a homeowners insurance policy underwritten by Century-National. Lee Deer is named as an additional insured under the policy. The policy was effective from June 27, 2019, until June 27, 2020, and provided, among other things, coverage for damage to the dwelling up to a limit of $361,442.

Shortly after the policy was issued, an inspection of the plaintiffs' home conducted at the behest of the insurance companies revealed that a portion of the exterior of the home was missing siding. On July 24, 2019, Vanessia Babbitt, a home inspection assistant acting on behalf of the insurance companies, sent an email to Jessica Perry, The Trahan Agency, Inc.'s office manager, concerning the results of the inspection. The email included the home inspection report as an attachment and stated that the "[m]issing siding on [the] exterior walls" needed repair. The email further stated, "Please discuss the situation with your insured, as repairs are required as a condition of continued coverage" and indicated that proof of repair was required no later than March 27, 2020. Babbitt sent a follow-up email to Perry on March 27, 2020, stating: "We have not received a response regarding the . . . request for repairs . . . [namely] [m]issing siding on the exterior walls. Due to not receiving a response the policy has been set to nonrenew. Please submit proof of repairs . . . by the policy expiration date." The plaintiffs contend they never received any communication from Perry, or anyone else

from The Trahan Agency, Inc., regarding the inspection, the necessary repairs, or the risk of nonrenewal.

On April 19, 2020, Century-National issued a notice of nonrenewal, sent by certified mail, to Keleen Deer and The Trahan Agency, Inc.[2] The notice provided that "[t]his insurance is no longer acceptable due to the inspection report . . . [that] revealed conditions which increase the exposure to loss and prevent your home from meeting underwriting guidelines. Written requests regarding the following concern/repairs have been sent but proof of compliance has not been received." The notice identified the "concern/repairs" at issue as the "[m]issing siding on the exterior walls." The notice also stated that, "[i]n order to have this notice rescinded we must receive proof that repairs have been completed to the company's satisfaction prior to the non-renewal date on this notice," and listed the nonrenewal date as June 27, 2020, at 12:01 a.m.

The plaintiffs dispute receipt of the notice of nonrenewal. A mail carrier with the United States Postal Service first attempted delivery of the notice of nonrenewal on April 23, 2020, but noted in the tracking system: "Notice Left (No Authorized Recipient Available) . . . ." Two subsequent reminders were left at the plaintiffs' address. The postal service declared the notice "[u]nclaimed" on May 6, 2020, and returned the letter to Century-National.

The policy expired on June 27, 2020. On July 15, 2020, the plaintiffs' home was destroyed in an accidental fire. When the plaintiffs made a claim under the policy, they learned that the policy had not been renewed.

[2] The nonrenewal provision of the policy provides: "We may elect not to renew this policy and may do so by letting you know in writing at least 60 days before the expiration date of this policy. The written notice, stating the reasons for nonrenewal, may be delivered to you, or mailed to you at your mailing address shown in the Declarations by registered mail, certified mail or United States Postal Service certificate of mailing."

Thereafter, in August, 2020, the plaintiffs brought an action against the defendants (first action). The plaintiffs alleged that the insurance companies breached the terms of the policy and violated General Statutes § 38a-323[3] by failing to ensure that the plaintiffs received actual notice of nonrenewal (count one); violated the Connecticut Unfair Insurance Practices Act (CUIPA), General Statutes § 38a-815 et seq., and the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. (count two); acted in bad faith (count three); and breached the implied covenant of good faith and fair dealing (count four). In count five, the plaintiffs asserted a negligence claim against the Trahan defendants for their failure to notify the plaintiffs of the insurance companies' intention not to renew the policy based on common-law negligence, a violation of § 38a-323, and a breach of fiduciary duty.

The Trahan defendants filed a motion to strike the negligence claim against them, as set forth in count five of the plaintiffs' complaint, on the ground that it failed to state a claim upon which relief could be granted. In support of their motion, the Trahan defendants asserted that the plaintiffs sought "to impose a duty upon the undersigned defendants, as an insurance agent [and agency], [that] is not recognized in Connecticut."

Over the plaintiffs' objection, the court, *Schuman*, *J.*, granted the motion to strike. Judge Schuman concluded

[3] General Statutes § 38a-323 provides in relevant part: "(a) (1) No insurer shall refuse to renew any policy . . . unless such insurer or its agent sends, by registered or certified mail or by mail evidenced by a certificate of mailing, or delivers to the named insured, at the address shown in the policy, or, if agreed between the insurer and the named insured, by electronic means, at least sixty days' advance notice of its intention not to renew. The notice of intent not to renew shall state or be accompanied by a statement specifying the reason for such nonrenewal.

* * *

"(c) Failure of the insurer or its agent to provide the insured with the required notice of nonrenewal . . . shall entitle the insured to: (1) Renewal of the policy for a term of not less than one year . . . ."

that § 38a-323 does not apply to the Trahan defendants because they are insurance brokers and not agents of the insurance companies; the Trahan defendants did not have a duty to provide notice of nonrenewal to the plaintiffs under the common law because the agency relationship between the parties terminated upon the procurement of the policy pursuant to *Precision Mechanical Services, Inc.* v. *T.J. Pfund Associates, Inc.*, 109 Conn. App. 560, 565–66, 952 A.2d 818, cert. denied, 289 Conn. 940, 959 A.2d 1007 (2008) (*Precision Mechanical*); and the plaintiffs failed to sufficiently allege a cause of action for breach of a fiduciary duty because, inter alia, the common law does not recognize the existence of a fiduciary relationship between an insurance broker and an insured.

After Judge Schuman granted the motion to strike, the plaintiffs filed a substitute complaint repleading the negligence count against the Trahan defendants and adding two new counts against them, alleging a violation of CUTPA based on a violation of CUIPA and a breach of the implied covenant of good faith and fair dealing. The Trahan defendants filed an objection to the new counts, which Judge Schuman sustained in part and overruled in part. Specifically, Judge Schuman struck the CUTPA count, explaining that "[t]he CUTPA count necessarily alleges violations of CUIPA, which would raise the new issue of general business practice, would undoubtedly entail significant new discovery demands, and would essentially change the nature of the case. The plaintiffs may well still have the ability to bring this claim independently." Judge Schuman did not strike the count alleging a breach of the implied covenant of good faith and fair dealing because it was "reasonably related to the detailed negligence allegations of count five and therefore fits with Connecticut's liberal policy regarding pleading amendments."

Thereafter, the plaintiffs filed a separate action against the Trahan defendants (second action), alleging that they violated CUIPA and CUTPA by, inter alia, "using deceitful and misleading practices by not fully informing their customers that they were not being insured with Allstate [Insurance Company (Allstate)] homeowners insurance" after holding themselves out as "exclusive Allstate . . . representative[s]"; failing to notify the plaintiffs of the insurance companies' notices regarding the results of the inspection; and failing to inform the plaintiffs that the policy would not be renewed unless the missing siding was repaired.

All of the parties subsequently filed motions for summary judgment in both actions. The actions had been consolidated and transferred to the Complex Litigation Docket in the judicial district of Hartford. The court, *Noble*, *J.*, heard argument on these motions on January 5, 2022.

On May 3, 2022, Judge Noble issued a memorandum of decision granting the insurance companies' motion for summary judgment in the first action. Judge Noble explained that a review of the plaintiffs' policy revealed that the issuing company was Century-National and not National General; the terms of the policy did not require Century-National to provide actual notice of nonrenewal; and, similarly, § 38a-323 (a) (1) permitted notice by certified mail, as Century-National had done, and proof of receipt of notice was not required.

On May 4, 2022, Judge Noble issued separate orders granting the motions for summary judgment filed by the Trahan defendants in the first and second actions. In the orders, Judge Noble explained that he was adopting the analysis employed by Judge Schuman in granting the motion to strike. These three appeals followed.[4]

[4] The three appeals are Docket No. AC 45509, which is the plaintiffs' appeal from the summary judgment rendered in favor of the insurance companies in the first action; Docket No. AC 45510, which is the plaintiffs' appeal from the summary judgment rendered in favor of the Trahan defen-

Before turning to the plaintiffs' claims, we set forth the applicable standard of review. "The standards governing our review of a trial court's decision to grant a motion for summary judgment are well established. Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts [that], under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact [that] will make a difference in the result of the case. . . . Finally, the scope of our review of the trial court's decision to grant the [defendants'] motion[s] for summary judgment is plenary." (Internal quotation marks omitted.) *Day* v. *Seblatnigg*, 341 Conn. 815, 825, 268 A.3d 595 (2022).

I

AC 45509

In Docket No. AC 45509, the plaintiffs appeal from the judgment of the trial court granting the motion for summary judgment in the first action, in which the plaintiffs had claimed that the insurance companies violated § 38a-323 and breached the terms of the policy by failing to ensure that the plaintiffs received actual

dants in the first action; and Docket No. AC 45511, which is the plaintiffs' appeal from the summary judgment rendered in favor of the Trahan defendants in the second action.

notice of nonrenewal. We reject the plaintiffs' contention that the trial court improperly rendered summary judgment for the insurance companies in the first action.

The following additional procedural history is relevant to our disposition of this appeal. In the court's May 3, 2022 memorandum of decision granting the insurance companies' motion for summary judgment, the court explained: "As an initial matter, a review of the policy at issue reveals that the issuing company was Century-National and not National General. Therefore, summary judgment enters in favor of National General. . . .

"[With respect to the issue of notice of nonrenewal, the plaintiffs] argue that this [policy] mandates actual notice because of the language that nonrenewal may be done 'by letting you know in writing at least 60 days before the expiration date of this policy' of the nonrenewal.[5] This phrase, in their view, clearly and unambiguously established a standard of actual notice. The argument ignores the language that Century-National *may* let them know of the nonrenewal and the following language that provides the means by which notice may be provided, i.e., delivery to them, [or] mail at their mailing address by registered, certified mail or United States Postal Service certificate of mailing. Delivery, the only certain method of ensuring actual notice, is one of several means by which the notice of nonrenewal may be made. . . . The phrase 'letting you know,' read in context with the rest of the paragraph, may only reasonably be interpreted to mean that Century-National will advise the insured of a nonrenewal by one of several means, one of which, delivery, will result in actual notice, and the others may not.

[5] The nonrenewal language of the policy is set forth in footnote 2 of this opinion.

"The [plaintiffs] also argue that the attempt at nonrenewal runs afoul of . . . § 38a-323 (a) (1) . . . . Giving the words and phrases of the nonrenewal statute their plain and ordinary meaning leaves no room for ambiguity or dispute—it is the sending of, inter alia, the certified mail that satisfies the statute. No proof of receipt is required. The legislature afforded several options for a carrier to be compliant with the statute—sending by registered mail, sending by certified mail, a certificate of mailing, or, in the alternative, delivery to the named insured. The statute mandates no requirement that upon sending the appropriate notice, an insurer must thereafter confirm actual receipt, otherwise the mailing options would be redundant with the delivery option. Such a construct renders the word 'delivers' superfluous and unreasonable.

"Connecticut courts have repeatedly found that . . . sending notice of cancellation [of an insurance policy] by certified mail (see [General Statutes] § 38a-343 (a)[6]), satisfies an insurer's obligations to its insured. The Connecticut Supreme Court articulated that there is no actual receipt requirement when a provision allows notice by certified mail. *Westmoreland* v. *General Accident Fire & Life Assurance Corp., Ltd.*, 144 Conn. 265, 270, 129 A.2d 623 (1957). [Our] Supreme Court held that mailing, without proof of actual receipt, was sufficient to cancel coverage. '[T]he giving of notice by the method contracted for is sufficient whether it results in actual notice or not.' Id. In a different context, the [Appellate Court] found that actual receipt was immaterial when a contract permitted notice via certified mail. *Scoville* v. *Shop-Rite Supermarkets, Inc.*, 86 Conn. App. 426,

[6] General Statutes § 38a-343 (a) provides in relevant part that no cancellation of a policy to which that statutory subsection applies "shall be effective unless the notice is delivered or sent by the insurer to the named insured . . . by registered mail, certified mail, [or] mail evidenced by a certificate of mailing . . . ."

[434–35], 863 A.2d 211 (2004), [cert. denied, 272 Conn. 921, 867 A.2d 838 (2005)]. The Appellate Court observed that when the contract permits notice by certified mail, actual receipt is not contemplated. Moreover, '[a]ny rule that provides that the risk of delivery of certified mail should be placed solely on the sender would set a dangerous precedent. There are many variables associated with any type of mail delivery that are out of the control of either party, such as misdelivery or late delivery. In addition, by placing the risk solely on the optionee, the optionor could intentionally avoid accepting delivery until after the terminal date had passed.'[7] Id., 433. The court finds this reasoning persuasive, and binding, that the notice required by § 38a-323 was provided by Century-National." (Citation omitted; emphasis in original; footnotes added; footnote in original.)

On appeal, the plaintiffs claim that the trial court improperly concluded that the insurance companies were entitled to summary judgment because (1) Century-National[8] failed to provide actual notice of its intention not to renew the policy pursuant to § 38a-323, (2) Century-National failed to provide actual notice of nonrenewal pursuant to the terms of the insurance policy, and (3) the court failed to consider evidence demonstrating that National General was involved in the pro-

[7] "The [Appellate Court] declined to speculate, as this court does, 'as to whether there was any avoidance of the letter in this case. [It] merely point[ed] out that a rule that places the risk on the sender may allow for uncertainty and manipulation of the contracting process.' [*Scoville* v. *ShopRite Supermarkets, Inc.*, supra, 86 Conn. App.] 433 n.8."

[8] Although the plaintiffs direct their first and second claims against both National General and Century-National, it is undisputed that their insurance policy was underwritten by Century-National. Consequently, as we explain more fully in part I C of this opinion, only Century-National, and not National General, potentially could be liable to the plaintiffs. Accordingly, our discussion of the plaintiffs' first two claims is limited to Century-National.

cessing and management of their insurance policy.[9] We address each claim in turn.

A

The plaintiffs first claim that Century-National's mailing of the notice of nonrenewal, without ensuring that it subsequently was delivered to and received by the plaintiffs, was insufficient to comply with the notice requirements of § 38a-323. Specifically, they contend that subsection (c) of § 38a-323, which sets forth the remedies available for an insurer's failure to provide the required notice, and the legislative history of the statute, demonstrate that "actual notice" is required. We are not persuaded.

Analysis of this claim "raises a question of statutory construction, which is a [question] of law, over which we exercise plenary review. . . . The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z

[9] The plaintiffs also claim that they presented sufficient evidence to rebut any presumption under the mailbox rule that they received the notice after it was mailed. See *Britto* v. *Bimbo Foods, Inc.*, 217 Conn. App. 134, 141 n.10, 287 A.3d 1140 (2022) ("[t]he mailbox rule provides that a properly stamped and addressed letter that is placed into a mailbox or handed over to the United States Postal Service raises a rebuttable presumption that it will be received" (internal quotation marks omitted)), cert. denied, 346 Conn. 921, 291 A.3d 1040 (2023). In light of our conclusion, as explained in part I A and B of this opinion, that receipt of notice was not required under either § 38a-323 (a) or the terms of the policy, we need not address the plaintiffs' contention regarding the mailbox rule.

directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . .

"A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation . . . . When a statute is not plain and unambiguous, among other things, we look for interpretive guidance . . . to the legislative policy [the statute] was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Citation omitted; internal quotation marks omitted.) *Belgada* v. *Hy's Livery Service, Inc.*, 220 Conn. App. 102, 118–19, 297 A.3d 199 (2023).

Section 38a-323 (a) (1) provides in relevant part that the owner of an insurance policy subject to the terms of that statutory provision is entitled to renewal of the policy unless the insurer "sends, by registered or certified mail . . . or delivers to the named insured, at the address shown in the policy . . . at least sixty days' advance notice of its intention not to renew. . . ." We agree with the trial court that, under the clear and unambiguous language of § 38a-323 (a) (1), sending a notice of nonrenewal by certified mail, as Century-National undisputedly did in the present case, satisfies the statutory notice requirement. Although the plaintiffs contend that an insurer is required to provide "actual notice" of nonrenewal—that is, to ensure both delivery *and receipt* of the notice—§ 38a-323 (a) (1) plainly provides that an insurer may decline to renew a policy after it "*sends*, by registered or certified mail . . . *or delivers* to the named insured . . . advance notice of its intention not to renew. . . ." (Emphasis added.)

General Statutes § 38a-323 (a) (1). Because the methods by which an insurer may satisfy the notice requirement of § 38a-323 are framed in the disjunctive, any one of them will suffice. See *777 Residential, LLC* v. *Metropolitan District Commission*, 336 Conn. 819, 838, 251 A.3d 56 (2020) ("[o]rdinarily, [t]he use of the disjunctive or between the two parts of the statute indicates a clear legislative intent of separability" (internal quotation marks omitted)).[10]

Indeed, the interpretation of § 38a-323 (a) (1) advanced by the plaintiffs would render meaningless the language of that provision affording the insurer the option to send the notice and specifying the manner in which it may be sent. "It is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.) *Lopa* v. *Brinker International, Inc.*, 296 Conn. 426, 433, 994 A.2d 1265 (2010).

The plaintiffs maintain that their contention regarding the requirement of actual notice is supported by § 38a-323 (c), which provides that the insurer's "[f]ailure . . . to *provide the insured* with the required notice of

[10] We recognize that "[t]he disjunctive or can be construed as and where such construction clearly appears to have been the legislative intent." (Internal quotation marks omitted.) *777 Residential, LLC* v. *Metropolitan District Commission*, supra, 336 Conn. 838. The present case, however, is distinguishable from cases in which "or" has been interpreted to mean "and," as the plaintiffs have not claimed or demonstrated that the terms "sends" and "delivers" are defined synonymously. See id., 838–39 (disjunctive "or" not interpreted as "and" where statutory terms at issue were not defined synonymously).

nonrenewal" entitles the insured to renewal of the policy for a term of not less than one year. (Emphasis added.) Subsection (c) of § 38a-323, however, must be read in the context of the entire statute, including, of course, § 38a-323 (a) (1). See *Torres* v. *Kunze*, 106 Conn. App. 802, 807, 945 A.2d 472 (2008) ("A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole." (Internal quotation marks omitted.)). The "required notice" that an insurer is obligated to provide under § 38a-323 (c) is expressly delineated in § 38a-323 (a) (1), and the use of the word "provide" in § 38a-323 (c) cannot logically or reasonably be construed to impose a different or additional notice obligation on the insurer.

The plaintiffs also argue that the legislative history of § 38a-323 supports the conclusion that the legislature intended actual notice of nonrenewal to be received by an insured before the insurer may opt not to renew the policy. We will not consider the legislative history, however, in view of the provision's plain and straightforward language. "Where the language of the statute is clear and unambiguous, it is assumed that the words themselves express the intent of the legislature and there is no need for statutory construction or a review of the legislative history." (Internal quotation marks omitted.) *Gaudett* v. *Bridgeport Police Dept.*, 218 Conn. App. 720, 729, 293 A.3d 351 (2023); see also General Statutes § 1-2z. The statutory text clearly indicates that an insurer's obligation may be satisfied by sending the notice of nonrenewal by certified mail; General Statutes § 38a-323 (a) (1); and the plaintiffs concede that the notice in the present case was sent in this manner. Accordingly, the trial court properly rendered summary

judgment in favor of Century-National on the plaintiffs' claim under § 38a-323.

B

The plaintiffs also assert that Century-National breached the terms of the insurance policy by failing to provide actual notice of nonrenewal. In support of this contention, the plaintiffs rely on the policy language providing that Century-National may elect not to renew the policy "by letting [them] know" of that decision in writing. See footnote 2 of this opinion. In addition, the plaintiffs argue that the nonrenewal language of the policy was added as a special provision, modifying the standard policy, to be consistent with what the plaintiffs contend is the requirement under § 38a-323 of "actual receipt by the insureds of the notice . . . ." We disagree.

Our standard of review for interpreting insurance policies is well settled. "The construction of an insurance policy presents a question of law that we review de novo. . . . Insurance policies are interpreted based on the same rules that govern the interpretation of contracts. . . . In accordance with those rules, [t]he determinative question is the intent of the parties . . . . If the terms of the policy are clear and unambiguous, then the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning. . . . In determining whether the terms of an insurance policy are clear and unambiguous, [a] court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity . . . . Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms. . . . As with contracts generally, a provision in an insurance policy is ambiguous when it is reasonably susceptible to more than one reading. . . . Under

those circumstances, any ambiguity in the terms of an insurance policy must be construed in favor of the insured . . . .'' (Citations omitted; internal quotation marks omitted.) *Warzecha* v. *USAA Casualty Ins. Co.*, 206 Conn. App. 188, 191–92, 259 A.3d 1251 (2021).

''It is always competent for parties to contract as to how notice shall be given, unless their contract is in conflict with law or public policy. When they do so contract, the giving of a notice by the method contracted for is sufficient whether it results in actual notice or not.'' (Internal quotation marks omitted.) *Stratton* v. *Abington Mutual Fire Ins. Co.*, 9 Conn. App. 557, 562, 520 A.2d 617, cert. denied, 203 Conn. 807, 525 A.2d 522 (1987); see also *Westmoreland* v. *General Accident Fire & Life Assurance Corp.*, supra, 144 Conn. 270; *Scoville* v. *Shop-Rite Supermarkets, Inc.*, supra, 86 Conn. App. 434.

It is apparent that, like § 38a-323 (a) (1), the policy provision governing nonrenewal does not require that the plaintiffs receive actual notice of nonrenewal. The policy provides that, if Century-National elects not to renew the policy, it ''may do so by letting you know in writing at least 60 days before the expiration date of this policy,'' and, further, that such notice ''may be delivered to you, or mailed to you at your mailing address . . . by registered mail, [or] certified mail . . . .''[11]

Sending a notice of nonrenewal by certified mail, as Century-National did in the present case, complies with the express terms of the policy. The policy plainly informs the plaintiffs that the written notice ''may be

[11] The general terms of the policy set forth a nonrenewal provision that states: ''We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.'' The operative language of the policy, however, as discussed previously, is contained in an endorsement of special provisions applicable to Connecticut policies.

delivered to you, *or mailed* to you"; (emphasis added); which, contrary to the plaintiffs' argument, is fully consistent with an insurer's notice obligation under § 38a-323. See part I A of this opinion. As with the language of § 38a-323, the policy's use of the disjunctive "or" indicates that either method of providing notice is sufficient to comply with the terms of the policy; see *Connecticut Ins. Guaranty Assn.* v. *Drown*, 314 Conn. 161, 189, 101 A.3d 200 (2014); and the policy interpretation that the plaintiffs advocate simply ignores the language advising the plaintiffs that the written notice may be mailed to them. See *Karas* v. *Liberty Ins. Corp.*, 335 Conn. 62, 96, 228 A.3d 1012 (2019) ("[s]ince it must be assumed that each word contained in an insurance policy is intended to serve a purpose, every term will be given effect if that can be done by any reasonable construction" (internal quotation marks omitted)). Accordingly, we conclude that the court properly rendered summary judgment in favor of Century-National on the plaintiffs' claim under the policy.[12]

C

The plaintiffs further argue that the court, in granting the motion for summary judgment in favor of National General, failed to properly consider certain evidence demonstrating a genuine issue of material fact that National General was involved in the processing and management of their policy. National General responds that it was entitled to summary judgment because, as the plaintiffs acknowledge, there was no privity of contract between the plaintiffs and National General. We agree with National General.

[12] The plaintiffs also maintain that the trial court improperly rendered summary judgment for the insurance companies on the plaintiffs' claim that Century-National refused to honor the terms of the policy in bad faith in violation of CUIPA and CUTPA. The plaintiffs' bad faith claim necessarily fails, however, in light of our conclusion that Century-National did not breach the terms of the policy.

The following additional procedural history is relevant to this claim. At the hearing on the parties' motions for summary judgment, the following colloquy took place between the court and the plaintiffs' counsel regarding National General's involvement with the plaintiffs:

"The Court: . . . [A]s part of the [insurance companies'] motions for summary judgment, [National General] indicated that it didn't write the policy and it had no contractual relationship with your clients, the contractual relationship [was] with [Century-National]. I didn't see any evidentiary opposition to that assertion solely as to [National General], did I miss it or?

"[The Plaintiffs' Counsel]: Only referenced to the various documents that were provided to the plaintiff[s] from [National General] that indicates [National General] was involved in this. I guess at the end of the day, to be completely honest, it probably doesn't matter much even from a practical standpoint because there is a defendant and an insurance company here. But the argument was that the various documents that were provided by [National General], they did list [National General] so. But you're correct, Your Honor, you didn't see much other than maybe a few letter[s].

"The Court: And there's no policy in so far as you know, and you have no basis to establish that there's a policy from [National General] with your clients?

"[The Plaintiffs' Counsel]: Correct.

"The Court: So that the breach of contract claims, the bad faith, which would need to have a contractual basis, any claim that would be dependent upon the existence of an insurance contract between [National General] and your clients [are] entitled to summary judgment?

"[The Plaintiffs' Counsel]: Correct."

On appeal, the plaintiffs challenge the trial court's decision granting National General's motion for summary judgment based on the court's determination that the issuing company was Century-National and not National General. In support of their contention, the plaintiffs point to certain evidence that, they claim, tends to establish that National General was involved in processing and managing the plaintiffs' policy.[13] There is no dispute, however, that, as reflected on the first page of the policy, on the policy's signature page, and in the notice of nonrenewal, the plaintiffs' policy was underwritten by Century-National, and there was no privity between the plaintiffs and National General. Although the evidence may suggest some possible involvement by National General in the processing of the policy, or some affiliation or association between National General and Century-National,[14] the plaintiffs offer no legal authority, and we are aware of none, for the proposition that such involvement can form a basis for liability under either § 38a-323 or the terms of the contract at issue in the present case. See *Travinski* v. *General Ins. Co. of America*, 224 Conn. App. 838, 846,

[13] Specifically, the evidence identified by the plaintiffs includes the declarations page of the policy, which mentions National General; the notice of nonrenewal, which lists "National General" on the return address and "NatGen Premier" on the letterhead; the United States Postal Service electronic delivery confirmation for the notice of nonrenewal, which lists "National General" on the address for the return receipt, indicates that it was returned to that address, and lists the recipient who signed for the delivery as being located at "NGIC"; the emails from Babbitt to Perry regarding the results of the inspection, which indicate that Babbitt is associated with "NatGen Premier," as listed in her signature block; and email correspondence regarding the plaintiffs' insurance claim after the fire, which includes individuals using email addresses with the domain "@ngic.com."

[14] On appeal, the insurance companies represent that National General is "a sister subsidiary company of Century-National under the National General Holdings Corp. banner . . . ." This representation by the insurance companies is consistent with the evidence before the trial court indicating that both Century-National and National General are members of the National General Insurance Group.

A.3d (2024) (this court was unaware of any legal authority for proposition that affiliation or involvement that certain other insurance companies had with named defendant as underwriter of insurance policy could form basis for liability under terms of policy).

Moreover, even if National General had played a role in the issuing, underwriting or processing of the policy, such that its alleged conduct, like that of Century-National, could potentially have rendered it liable to the plaintiffs, National General would be entitled to summary judgment on the merits of the plaintiffs' claim for the same reasons that Century-National is entitled to summary judgment. See part I A and B of this opinion. We therefore agree with National General that the court properly rendered summary judgment in its favor.

II

AC 45510 & AC 45511

In Docket Nos. AC 45510 and AC 45511, the plaintiffs appeal from the judgments of the trial court, *Noble*, *J.*, granting the motions for summary judgment filed by the Trahan defendants in the first and second actions.[15] The following additional procedural history is relevant to our disposition of these appeals. In granting the Trahan defendants' motions for summary judgment, the court explained that it was relying on Judge Schuman's analysis in granting the motion to strike: "The court adopts the well reasoned analysis set forth in the decision of the court, *Schuman*, *J.*, in his memorandum of decision [on the motion to strike], which concluded that there is no duty imposed on the Trahan defendants by virtue of . . . § 38a-323 (a) (1) and that an insurance agent has no duty to notify the plaintiffs of the impending nonrenewal of the policy or their receipt of

[15] The briefs filed by the parties are identical in both appeals. In addition, the two appeals, although not consolidated, were heard together at oral argument in this court pursuant to an order of this court.

the notice of nonrenewal. . . . In the absence of any duty or imposition of liability pursuant to § 38a-323, the defendants' motion for summary judgment is granted and the plaintiffs' motion is denied." (Citation omitted.)

In Judge Schuman's decision granting the motion to strike, he explained that "[t]he plaintiffs' incorporation of § 38a-323 (a) and (c) seems almost inadvertent. They do not specifically entitle count five as a statutory cause of action. Other than incorporating the statutes by reference as part of a wholesale incorporation of count one, the plaintiffs do not expressly mention or cite the statutes, much less allege the elements of a statutory violation by the Trahan defendants. In any event, the statute does not apply to the Trahan defendants. Section 38a-323 (a) (1) does include the term 'agent' . . . . But neither the statute nor any related statutes provide a definition of the term 'agent' or any indication that the term refers to an insurance broker. In fact, when the legislature has sought to address the separate category of insurance 'brokers,' it has used that term expressly. . . . There is no reason to believe that § 38a-323 changes what the Appellate Court has described as the 'general rule' that 'the agency relationship between a broker and the insured terminates upon procurement of the requested insurance policy.' *Precision Mechanical Services, Inc.* v. *T.J. Pfund Associates, Inc.*, [supra, 109 Conn. App. 565–66]. Thus, the better interpretation of the term 'agent' in § 38a-323 is that it refers to an employee or contractor of the insurance company specifically charged with the duty of sending notice of cancellation, rather than an 'agent' as a synonym for insurance broker." (Citation omitted.)

Judge Schuman next concluded that the Trahan defendants did not have a duty to provide notice of nonrenewal or cancellation to the plaintiffs under the common law. Judge Schuman explained: "Our appellate courts have recognized that an insurance broker

becomes the agent of the insured [w]hen procuring insurance for a person [or entity]. . . . But, as mentioned, and as summarized in *Precision Mechanical Services, Inc.* v. *T.J. Pfund Associates, Inc.*, supra, [109 Conn. App. 565–66], the general rule is that the agency relationship between a broker and the insured terminates upon procurement of the requested insurance policy. In other words, [o]nce that purpose is accomplished . . . and the insurance is procured, the agency relationship between the insured and the broker terminates, and the broker is without any authority to do anything which further affects the insured unless expressly or impliedly authorized by the insured to do so. [Id., 565] . . . . The logical consequence is that the broker has no duty to provide a subsequent notice of cancellation to the insureds.

"Both sides, however, rely on other language in *Precision Mechanical* to advance their positions. The plaintiffs observe that the *Precision Mechanical* court quoted general language from other sources suggesting that brokers do have a duty to inform their insureds of cancellation. . . . As the defendants suggest, however, these quotations do not state the actual holding of the Appellate Court. . . . Although the Appellate Court did, in passing, quote from the other sources as indicated, the actual holding of the court was that the broker had a duty to notify the insureds because the broker made erroneous misstatements to the plaintiff that the plaintiff's policy remained in effect during the time that a fire occurred. . . . There were thus special circumstances, involving culpable acts or omissions by the broker, that justified departure from the general rule. . . .

"Here the plaintiffs do not allege any special circumstances that imposed any duty on the broker to notify the plaintiffs about impending cancellation. The plaintiffs do allege that the Trahan defendants had acted as

their insurance agent for several years prior to the fire and that the plaintiffs had come to rely on the [Trahan] defendants to ensure that various policies were active and up-to-date. . . . The plaintiffs also allege that the Trahan defendants advised the plaintiffs in writing that the plaintiffs should contact [them] if the plaintiffs had questions about the policy or if they would like to review their coverage or report a claim. . . . But these contacts appear routine and do not involve a level of blameworthiness as in *Precision Mechanical* or the other cases. The same is true of the fact, as alleged, that the insurers sent a copy of the notice of cancellation to the broker. The broker could reasonably assume, based on the general rule, that the insurers would also notify the insureds. The court concludes that, under the facts alleged, there is no basis for an exception to the general rule that the broker does not have a duty to notify the insured of a policy's forthcoming cancellation." (Citations omitted; internal quotation marks omitted.)

Judge Schuman finally concluded that count five of the plaintiffs' complaint failed to state a cause of action for breach of a fiduciary duty. Specifically, Judge Schuman stated: "Our appellate courts have apparently not held that there is a fiduciary relationship between an insurance broker and an insured at any point in their dealings. It seems most unlikely that our courts would find a fiduciary relationship after the broker has procured the insurance policy when the courts have already held that there is generally no agency relationship after that point. . . . Further, notification of cancellation of a policy, while extremely important, does not involve the sort of 'superior knowledge, skill or expertise' that forms the basis of a fiduciary relationship." (Citation omitted.)

On appeal, in Docket No. AC 45510, the plaintiffs claim that Judge Noble improperly rendered summary judgment in favor of the Trahan defendants because,

contrary to the court's conclusion, the Trahan defendants (1) owed a common-law duty of care to provide the plaintiffs with notice of the results of the failed inspection and notice of the nonrenewal of their policy, and (2) failed to comply with the notice requirements of § 38a-323. In Docket No. AC 45511, the plaintiffs contend that Judge Noble improperly rendered summary judgment in favor of the Trahan defendants on their clam in the second action that the Trahan defendants violated CUIPA and CUTPA by virtue of their deceptive and misleading advertising practices, which, according to the plaintiffs, caused them to believe that their homeowners insurance policy was issued by Allstate.[16] We address each claim in turn.

A

The plaintiffs first contend that the trial court improperly rendered summary judgment in favor of the Trahan defendants on their common-law negligence claim. Specifically, the plaintiffs assert that the Trahan defendants owed a duty to provide them notice of (1) the results of the inspection, and (2) the nonrenewal of their policy. The Trahan defendants respond that (1) the plaintiffs failed to adequately preserve their claim that the Trahan defendants had a duty to provide notice of the inspection results, and (2) the court properly concluded that the Trahan defendants had no duty to provide notice of nonrenewal because the agency relationship between the parties terminated upon procurement of the policy. We agree with the Trahan defendants.

1

We first address the Trahan defendants' contention that the plaintiffs failed to preserve their claim that the

[16] Like their claim in Docket No. AC 45509, the plaintiffs also contend that they presented sufficient evidence to rebut any presumption under the mailbox rule that they received the notice after it was mailed. We do not consider this claim, however, for the same reason we did not address it in the plaintiffs' appeal in Docket No. AC 45509. See footnote 9 of this opinion.

Trahan defendants had a duty to notify them of the inspection results. "Our appellate courts, as a general practice, will not review claims made for the first time on appeal. We repeatedly have held that [a] party cannot present a case to the trial court on one theory and then seek appellate relief on a different one . . . ." (Internal quotation marks omitted.) *U.S. Bank National Assn.* v. *Eichten*, 184 Conn. App. 727, 756, 196 A.3d 328 (2018). "The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . The purpose of our preservation requirements is to ensure fair notice of a party's claims to both the trial court and opposing parties." (Citations omitted; emphasis in original; internal quotation marks omitted.) *White* v. *Mazda Motor of America, Inc.*, 313 Conn. 610, 620, 99 A.3d 1079 (2014). "[T]he determination of whether a claim has been properly preserved will depend on a careful review of the record to ascertain whether the claim on appeal was articulated below with sufficient clarity to place the trial court [and the opposing party] on reasonable notice of that very same claim." (Internal quotation marks omitted.) *Lowthert* v. *Freedom of Information Commission*, 220 Conn. App. 48, 56–57, 297 A.3d 218 (2023).

In addition, as previously noted, Judge Noble rejected the plaintiffs' common-law negligence claim in reliance on Judge Schuman's analysis in his decision granting the Trahan defendants' motion to strike. Judge Schuman's decision, however, did not address the inspection issue because that claim was not before him. Consequently, Judge Noble's decision also does not purport to address that claim. Because, as we explain hereinafter, the plaintiffs did not file a motion for articulation with respect to that claim, we treat the claim as having been rejected.[17] See, e.g., *Tremont Public Advisors, LLC* v.

[17] In light of our conclusion hereinafter that the inspection claim was not properly raised in the trial court, there is reason to believe that Judge Noble

Connecticut Resources Recovery Authority, 333 Conn. 672, 685, 217 A.3d 953 (2019) ("[a]lthough the trial court did not expressly address the plaintiff's contentions that it was entitled to sovereign immunity and immunity pursuant to 15 U.S.C. § 35, it implicitly rejected those claims"); *Bank of New York Mellon* v. *Horsey*, 182 Conn. App. 417, 441–42, 190 A.3d 105 (holding that court "implicitly rejected" defendant's claim at hearing, where defendant never sought articulation of subsequent ruling), cert. denied, 330 Conn. 928, 194 A.3d 1195 (2018).

Our review of the record reveals that the issue of the Trahan defendants' failure to notify the plaintiffs of the inspection results was not properly raised by the plaintiffs in the trial court. The negligence count of the plaintiffs' operative complaint in the first action includes allegations pertaining to the Trahan defendants' "ample opportunity to notify the plaintiffs concerning the necessity of correcting the missing exterior siding," but only in the context of the Trahan defendants' alleged duty to inform the plaintiffs of Century-National's "intention not to renew [their policy]." The plaintiffs focused on the notice of nonrenewal that the Trahan defendants had received on April 19, 2020, and alleged that the Trahan defendants' duty to notify the plaintiffs arose after that date. The plaintiffs did not allege that the Trahan defendants had a duty to provide them notice of the inspection results that they received on July 24, 2019, more than six months earlier.[18]

In the factual recitation set forth by the plaintiffs in their memorandum in support of their motion for

did not address the claim for that reason. Although we cannot resolve that question definitively given the silent record, we have no need to do so.

[18] At oral argument in this court, the plaintiffs' counsel observed that the plaintiffs raised the issue of the inspection results in their complaint in the second action. That complaint, however, concerned the plaintiffs' separate CUIPA/CUTPA claim against the Trahan defendants, not their claim sounding in common-law negligence.

summary judgment,[19] they state that they "were not aware that an inspection had been performed and were not informed of the results of the inspection until after the July 15, 2020 fire." In the portion of their memorandum addressing their negligence claim, however, they did not argue that the Trahan defendants had a duty to inform the plaintiffs of those inspection results, focusing, rather, on their claim that the defendants had failed to provide them with notice of the nonrenewal of their policy.

In the plaintiffs' memorandum in opposition to the Trahan defendants' motion for summary judgment, the plaintiffs again referred to the inspection, but not in the context of claiming that the Trahan defendants had a duty to inform them of the inspection results. Specifically, in response to the Trahan defendants' contention that their duty to the plaintiffs ended upon procurement of the policy, the plaintiffs maintained that the policy had not yet been finalized because of the failed inspection. The plaintiffs argued: "The home inspection, which revealed the missing siding, and [the insurance companies'] decision to nonrenew and terminate coverage flows directly from [the Trahan defendants'] attempts to secure homeowners coverage with [the insurance companies] on behalf of the [the plaintiffs] in June of 2019. On July 24, 2019, approximately one month after submitting the insurance application with [the Trahan defendants], [the insurance companies] notified [those defendants], not the [plaintiffs], that repairs to the missing siding were required to continue coverage. . . . The home inspection was required by [the insurance companies] as part of the insurance application process. The [Trahan defendants contend] that any duty owed to the plaintiffs terminates once the requested insurance has been secured. While the plaintiffs disagree with this contention, it is clear that insurance

[19] See footnote 1 of this opinion.

had not been finalized due to the missing siding. . . . [The Trahan defendants] had ample time to fulfill [*their*] *duty to properly inform the plaintiffs that* [*the insurance companies were*] *threatening to terminate the policy* because of the failed inspection." (Citations omitted; emphasis added.) It is apparent that this reference by the plaintiffs to the "failed inspection" was merely to identify the reason for the potential nonrenewal of the policy and was not an assertion that the Trahan defendants had a duty to notify the plaintiffs of the inspection separate and apart from their alleged duty to notify them of the nonrenewal. Indeed, the plaintiffs' reference to the "failed inspection" in their memorandum opposing the Trahan defendants' motion for summary judgment is contained in the portion of the memorandum captioned, "The [Trahan defendants] owed the plaintiffs a duty to act with reasonable skill, care, and diligence including *a duty to notify the* [*plaintiffs*] *of* [*the insurance companies'*] *decision to nonrenew their homeowners insurance policy*." (Emphasis added.)

At the hearing conducted by the trial court on the parties' summary judgment motions, the plaintiffs' counsel argued that "[t]he inspection was part of the application process" and that "[t]he reason for the nonrenewal has everything to do with the results of that inspection." The court questioned the plaintiffs' counsel as to whether the plaintiffs had previously raised such a claim, and the plaintiffs pointed to the previously referenced language in their opposition memorandum. The plaintiffs' counsel indicated that he had raised the issue of the inspection to explain why the Trahan defendants had an *ongoing duty to provide notice of the nonrenewal*, stating: "[T]he reason why this is important, why I'm bring[ing] this up, is because, to the extent that the case law suggests that any obligation of the agent terminates, any duty of the agent terminates,

upon procurement of the policy, this all stems from their procurement of the policy." Subsequently, the plaintiffs' counsel also stated that "[t]he facts show that clearly there was some obligation here on the part of [the Trahan defendants] to notify their insureds [about] the siding issue and the repair issue as well as the nonrenewal. And they're connected but they are separate." Considered in the broader context of counsel's argument concerning the application process, however, this isolated statement did not clearly alert the court that the plaintiffs had alleged a separate and distinct claim that the Trahan defendants had a duty to inform the plaintiffs about the inspection results.[20]

Thus, we conclude that the plaintiffs' contention on appeal that the Trahan defendants had a duty to notify them of the inspection results when the Trahan defendants received those results in July, 2019, and that that duty was separate from the duty that the Trahan defendants allegedly owed to provide notice of the impending nonrenewal, was not properly raised in the plaintiffs' operative complaint, in their memoranda, or at the hearing on the motions for summary judgment.[21] Accordingly, we further conclude that the claim as framed on appeal is unpreserved and we decline to review it.

[20] Moreover, even if this argument could be construed as alleging liability based on the Trahan defendants' claimed failure to notify the plaintiffs of the inspection results, separate and distinct from their alleged duty to provide notice of the nonrenewal, the plaintiffs' counsel could not properly raise such a claim for the first time at the argument on the summary judgment motions. See, e.g., *White* v. *Mazda Motor of America, Inc.*, supra, 313 Conn. 629 (plaintiff could not properly raise new theory of liability for first time in opposition to defendants' summary judgment motion when he failed to plead theory in his complaint).

[21] Although not required to do so, we note that the plaintiffs could have filed a motion for reargument or reconsideration and thereby cleared up any ambiguity in the record as to the breadth of their common-law claim and the court's purported failure to consider separately whether the Trahan defendants breached a duty to the plaintiffs by not informing them of the failed inspections.

We next consider whether the trial court properly determined, as a matter of law, that the Trahan defendants owed no duty to the plaintiffs to notify them of the nonrenewal of the policy. The following legal principles are relevant to our evaluation of this claim. "The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . Contained within the first element, duty, there are two distinct considerations. . . . First, it is necessary to determine the existence of a duty, and [second], if one is found, it is necessary to evaluate the scope of that duty. . . . Although it has been said that no universal test for [duty] has ever been formulated . . . our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. . . . Furthermore, [a] duty to use care may arise from a contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act. . . . Only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand. . . . If a court determines, as a matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant." (Citations omitted; internal quotation marks omitted.) *D'Angelo Development & Construction Corp.* v. *Cordovano*, 121 Conn. App. 165, 184–85, 995 A.2d 79, cert. denied, 297 Conn. 923, 998 A.2d 167 (2010). In addition, "[t]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law." (Internal quotation marks omitted.) *Gonzalez* v. *O & G Industries, Inc.*, 341 Conn. 644, 680, 267 A.3d 766 (2021).

"It is well established that an insurance broker owes a duty to his principal to exercise reasonable skill, care, and diligence in effecting the insurance, and any negligence or other breach of duty on his part which defeats the insurance which [the broker] undertakes to secure will render [the broker] liable to his principal for the resulting loss. . . . Where [a broker] undertakes to procure a policy affording protection against a designated risk, the law imposes upon him an obligation to perform with reasonable care the duty he has assumed, and he may be held liable for loss properly attributable to his default. The principal may sue either for breach of the contract or in tort for breach of duty imposed by it. . . .

"Our Supreme Court also has held that [w]hen procuring insurance for a person [or entity], a[n] [insurance] broker becomes the agent of that person [or entity] for that purpose. . . . Once that purpose is accomplished, however, and the insurance is procured, the agency relationship between the insured and the broker terminates, and the broker is without any authority to do anything which further affects the insured unless expressly or impliedly authorized by the insured to do so." (Citation omitted; internal quotation marks omitted.) *Precision Mechanical Services, Inc.* v. *T.J. Pfund Associates, Inc.*, supra, 109 Conn. App. 565; see also 12 E. Holmes, Appleman on Insurance (2d Ed. 1999) § 88.4, p. 721 ("[o]rdinarily, an agent or broker's obligation to his client ends with the placement of a policy unless he either agrees to do certain renewal or other servicing acts or through some understanding or pattern of conduct the insured relies on the agent or broker for that servicing").

On appeal, the plaintiffs contend that the Trahan defendants continued to owe them a duty of care, even after the policy went into effect, because a special or

fiduciary relationship existed between the parties.[22] We disagree.

The plaintiffs failed to adduce evidence sufficient to give rise to a factual issue regarding their claim that a relationship existed between the parties that imposed upon the Trahan defendants an ongoing duty of care to the plaintiffs. In *Precision Mechanical*, this court recognized that there are certain circumstances in which an agency relationship may extend beyond the procurement of a policy. See *Precision Mechanical Services, Inc.* v. *T.J. Pfund Associates, Inc.*, supra, 109 Conn. App. 570. In that case, the plaintiff, Precision Mechanical Services, Inc. (Precision), submitted evidence that it had retained the defendants, T.J. Pfund Associates, Inc., and Marianne Pfund (collectively, Pfund), a brokerage firm and an insurance agent, to procure general liability insurance coverage for a period between September, 1995, and January, 1997. Id., 566. Pfund procured a policy that provided only twelve months of coverage, which commenced on September 25, 1995, and was set to expire on September 25, 1996. Id., 567.

Precision also submitted evidence that, after the policy was procured, Pfund continued to act on Precision's behalf. See id. Pfund, among other things, sought an amendment of the policy to extend coverage until January 1, 1997, as initially requested by Precision; id.; and had a discussion with Precision's president about

[22] The plaintiffs also point to an affidavit from an alleged expert with experience in the insurance industry that they submitted in the trial court in opposition to the Trahan defendants' motions for summary judgment. In the affidavit, the affiant opined that the Trahan defendants owed a duty to advise their clients of the nonrenewal of policies and that they breached their duty to the plaintiffs in this case. This evidence does not create a genuine issue of material fact with respect to whether the Trahan defendants owed a duty of care to the plaintiffs because that issue presents a question of law for the court to decide. See *Gonzalez* v. *O & G Industries, Inc.*, supra, 341 Conn. 680.

renewal, stating that if Precision did not contact them, they would contact Precision to provide it with options for future coverage. Id., 569. Precision submitted evidence that, in May, 1996, Pfund received a copy of the insurer's notice of intent to cancel and the notice of cancellation of the policy, after Precision ceased making its monthly payments to the insurer at Pfund's advice. Id., 568, 570. Nevertheless, Pfund continued to repeatedly represent to Precision, until August 10, 1996, that its policy remained in effect until September, 1996. Id., 568, 570–71. On August 10, 1996, Precision learned from Pfund, for the first time, that the policy had been cancelled in May, 1996. Id., 569. Precision subsequently brought negligence and breach of contract claims against Pfund. Id., 561. The trial court granted Pfund's motion for summary judgment on the basis that the agency relationship between the parties had ended in September, 1995, when the policy was obtained and that Pfund thereafter owed no duty to Precision. Id., 562.

On appeal, this court determined that the trial court had improperly concluded that, as a matter of law, Pfund owed Precision no duty of care, including no duty to inform Precision that the insurer had cancelled the policy, because the agency relationship between the parties had terminated upon procurement of the policy. See id., 570. This court "agree[d] that a broker would have no liability for failing to notify the insured of the cancellation of its policy when the agency relationship had ended," but concluded that the circumstances of that case "present[ed] a different scenario." Id., 569–70. Specifically, this court concluded, on the basis of Precision's submissions, that there was a genuine issue of material fact as to the existence of an agency relationship between Precision and Pfund after September, 1995, and, therefore, the trial court improperly concluded that Pfund owed Precision no duty of care after that date. Id., 570.

In reaching this conclusion, this court recognized that, "as a general rule, the agency relationship between a broker and the insured terminates upon procurement of the requested insurance policy. . . . *However*, '[*i*]*nherent in the obligation to seek continuation of an insurance policy is the duty to notify the applicant if the insurer declines to continue* [*to insure*] *the risk*, so the applicant may not be lulled into a feeling of security or put to prejudicial delay in seeking protections elsewhere.' . . . *Lazzara* v. *Howard A. Esser, Inc.*, 802 F.2d 260, 266 (7th Cir. 1986); see also 12 E. Holmes, supra, § 86.6, p. 497 ('[a]n agent or broker cannot sit idly with a cancellation notice or information, but must seasonably inform the insured client thereby giving the client sufficient time to obtain protect[ion] with another insurer')." (Citation omitted; emphasis added.) *Precision Mechanical Services, Inc.* v. *T.J. Pfund Associates, Inc.*, supra, 109 Conn. App. 565–66.

The present case is distinguishable from *Precision Mechanical* because, in this case, the evidence submitted by the plaintiffs did not identify any actions that the Trahan defendants took after the policy was procured or any conversations between the parties to indicate that the Trahan defendants undertook an obligation to seek continuation of the policy. Here, the plaintiffs claim that a special relationship existed between the parties because of the unique degree of trust that they had established with The Trahan Agency, Inc.'s office manager, Perry, on the basis of their prior experience with her. The plaintiffs rely on the evidence they had submitted to the court describing their relationship with Perry, specifically, deposition testimony from Lee Deer, in which he stated, among other things, that they had "[a] very personal relationship with [Perry]; we trusted her, she took care of our insurance needs." He testified that they had an "unusually close"

relationship with Perry and stated that they had "relied on her for years."

Unlike in *Precision Mechanical*, the plaintiffs in the present case submitted no evidence that they initially hired the Trahan defendants to obtain coverage for a period beyond the coverage period of the policy they had procured.[23] There was no evidence that the Trahan defendants affirmatively sought to extend coverage on behalf of the plaintiffs after the policy already was in effect. There was also no evidence that the parties discussed renewal or that the Trahan defendants told the plaintiffs that they would provide options for future coverage beyond the end of the policy period. In addition, in contrast to the evidence of Pfund's misstatements to Precision in *Precision Mechanical*, the plaintiffs in the present case adduced no evidence that the Trahan defendants made any representations to them that their policy would renew or remain in effect after the end of the policy period on June 27, 2020. Thus, the evidence submitted by the plaintiffs in the present case did not raise a genuine issue of material fact as to the existence of an agency relationship between the parties after the procurement of the policy on June 27, 2019, because that evidence provided no indication that the Trahan defendants undertook an obligation to seek continuation of the policy after that date.[24] See *Precision Mechanical Services, Inc.* v. *T.J. Pfund Associates*,

[23] It is undisputed that the policy remained in effect during the entire policy period, from June 27, 2019, until June 27, 2020.

[24] Two Superior Court cases relied on by the plaintiffs, namely, *Barry* v. *Boccarossa*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-06-5000641 (October 2, 2006) (42 Conn. L. Rptr. 92), and *Kohn* v. *John M. Glover Agency, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-00-0339053 (April 24, 2001) (29 Conn. L. Rptr. 377), are also distinguishable from the present case. In *Barry*, the plaintiff, Bryan Barry, brought an action against the defendant, Steven Boccarossa, an insurance agent, alleging, inter alia, that Boccarossa failed to use reasonable care with respect to the renewal of Barry's automobile insurance policy. *Barry* v. *Boccarossa*, supra, 92. The court denied Boccarossa's motion to strike Barry's negligence claim, concluding that Boccarossa had a duty to inform Barry about a notice

Inc., supra, 109 Conn. App. 566. Accordingly, the court of cancellation. Id., 94. In that case, Barry's father allegedly had informed Boccarossa, before the policy's cancellation date, that Barry had been in an accident and that he was hospitalized. Id., 92. The court concluded that a fact finder reasonably could infer that Barry's father had contacted Boccarossa on behalf of his hospitalized son to request or authorize Boccarossa, either implicitly or explicitly, to make a claim with the insurer for Barry's benefit. Id., 93–94. The court emphasized the importance of the subsequent information that Boccarossa had received and the authorization to act on it, explaining that such contact "reestablished" the agency relationship that had terminated after the acquisition of the insurance policy. Id., 93. Moreover, the court explicitly recognized that "[t]his is not a case where the agent merely received notification of an impending cancellation and did not contact the insured." Id. In the present case, by contrast to *Barry*, there is no claim that the plaintiffs contacted the Trahan defendants after the procurement of their policy and before its nonrenewal to give the Trahan defendants express or implied authorization to take further action on their behalf.

In *Kohn*, certain personal property was stolen from the home of the plaintiffs, Kevin Kohn and Pamela Kohn, and only a portion of the loss was covered by the policy that they had procured insuring the premises and contents of their home. *Kohn* v. *John M. Glover Agency, Inc.*, supra, 29 Conn. L. Rptr. 377. The Kohns thereafter brought a negligence action against their insurance agent, the defendant, the John M. Glover Agency, Inc. (Glover Agency), claiming that their policy was inadequate and that the Glover Agency had breached a fiduciary or special relationship with the Kohns by failing to assist them in obtaining appropriate insurance. Id., 377–78. The Glover Agency filed a motion to strike the Kohns' claim on the ground that its agency relationship with the Kohns ended once the policy was procured. Id., 378. The court denied the motion, concluding that the Kohns had sufficiently alleged a fiduciary relationship with the Glover Agency on the basis of their allegations that they relied on the agency's expertise to obtain appropriate insurance. Id., 378–79. Unlike in the present case, in which the plaintiffs alleged a duty to provide notice of the nonrenewal of their policy, the plaintiffs in *Kohn* alleged that the agent had a duty to review their coverage and its adequacy and to explain what coverage was available. Id., 377–78. The court in *Kohn* recognized that, "once the coverage is procured, the agency relationship with the insured is ended, and the insurance broker has no authority to do anything further unless so authorized by the insured," but concluded that "Connecticut law does recognize an agency relationship between insurance agent and insured *at the time insurance is contracted* and some duties flow from that relationship. At the very least the agent has a duty to put into effect the type and amount of coverage requested. It also does not seem too much to ask that an agent, with his or her expertise and knowledge of the insurance business, review existing and available coverages, *at that time*." (Emphasis added.) Id., 378. In the present case,

properly concluded, as a matter of law, that the Trahan defendants owed the plaintiffs no duty of care because the agency relationship between them terminated upon procurement of the policy.

B

The plaintiffs next argue that the trial court improperly rendered summary judgment in favor of the Trahan defendants on their claim in the first action that the Trahan defendants failed to comply with the notice requirements of § 38a-323. The Trahan defendants contend, inter alia, that § 38a-323 applies only to agents of the insurance company, not agents of the insured, and, therefore, they owed no statutory duty to the plaintiffs. The plaintiffs respond that the Trahan defendants were acting "as captive insurance agents selling National General insurance policies," and, therefore, they did have a duty to provide notice of nonrenewal pursuant to § 38a-323.

We need not decide whether the Trahan defendants were acting as agents of the insurance companies for purposes of § 38a-323. As counsel for the plaintiffs conceded at oral argument before this court, this claim would be rendered a "nonissue" if we were to conclude that the notice afforded the plaintiffs by the insurance companies satisfied the requirements of § 38a-323 because, under that statutory provision, notice may be provided by either the "insurer *or* its agent . . . ." (Emphasis added.) General Statutes § 38a-323 (a) (1). Having determined in part I A of this opinion that the insurance companies complied with the statutory notice requirement, the plaintiffs' claim of inadequate

the plaintiffs contend that the Trahan defendants had an ongoing duty to the plaintiffs *after* the procurement of the policy, but, as previously explained, the plaintiffs have failed to present evidence to substantiate that claim.

notice must fail. Accordingly, the court properly rendered summary judgment in favor of the Trahan defendants on this issue.

C

Finally, the plaintiffs maintain that the trial court improperly rendered summary judgment in favor of the Trahan defendants on the plaintiffs' claim in the second action alleging a violation of CUIPA and CUTPA. Specifically, the plaintiffs contend that the court erred in granting the Trahan defendants' motion with respect to their contention that the Trahan defendants engaged in deceptive or misleading acts or practices by failing to inform them that their policy was issued by Century-National rather than by Allstate.[25] The Trahan defendants respond that the court properly granted their motion for summary judgment on this claim because the plaintiffs "failed to allege, never mind introduce, any evidence that being insured through [Century-National] and not Allstate in any way caused them damages."[26] We agree with the Trahan defendants.

The following legal principles guide our analysis of the plaintiffs' claim. "CUTPA is, on its face, a remedial statute that broadly prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . . . To give effect

[25] In the trial court, the plaintiffs enumerated several other practices that, they claimed, violated CUIPA and CUTPA, including the Trahan defendants' failure to notify them of the inspection results and the impending nonrenewal. On appeal, however, the plaintiffs' CUIPA/CUTPA claim concerning the Trahan defendants is limited to the Trahan defendants' alleged practice of not fully informing their customers, including the plaintiffs, that they were not being insured with Allstate.

[26] The Trahan defendants also argue, alternatively, that they had no duty to inform the plaintiffs about the expanded insurance program because it was "unquestionably no secret" that the plaintiffs' policy was underwritten by Century-National and the policy makes no reference to Allstate. Because we agree with the Trahan defendants' lack of causation argument, we need not address the Trahan defendants' alternative argument.

to its provisions, [General Statutes] § 42-110g (a) of [CUTPA] establishes a private cause of action, available to [a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by [General Statutes §] 42-110b . . . . CUIPA, which specifically prohibits unfair business practices in the insurance industry and defines what constitutes such practices in that industry; see General Statutes § 38a-816; does not authorize a private right of action but, instead, empowers the [insurance] commissioner to enforce its provisions through administrative action. See General Statutes §§ 38a-817 and 38a-818. . . . [T]his court [however, has] determined that individuals may bring an action under CUTPA for violations of CUIPA." (Internal quotation marks omitted.) *Dorfman* v. *Smith*, 342 Conn. 582, 614, 271 A.3d 53 (2022).

"In order to sustain a CUIPA cause of action under CUTPA, a plaintiff must allege conduct that is proscribed by CUIPA." (Internal quotation marks omitted.) Id. Of particular relevance to the present case, CUIPA prohibits deceptive or misleading advertising of insurance policies, such as "[m]aking, issuing or circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison which . . . uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof . . . ." General Statutes § 38a-816 (1) and (2).

The plaintiffs alleged in the second action that the Trahan defendants violated CUIPA and CUTPA by "using deceitful and misleading practices [in] not fully informing their customers that they were not being insured with Allstate homeowners insurance." Specifically, the plaintiffs alleged that, from 2003 until 2020, apart from a brief time during which the plaintiffs were

customers of a different insurance agency and insurance company, the plaintiffs were insured by Allstate, with their policies secured through the Trahan defendants and its predecessor agency. They further alleged that, during this time, the Trahan defendants were "captive" agents of Allstate, that is, they were prohibited from selling insurance products of other companies, and they held themselves out to the public, and to the plaintiffs, as Allstate representatives. Sometime before 2018, however, Allstate withdrew from selling homeowners insurance in Connecticut and negotiated an addendum to its exclusive agency agreement, which allowed captive agents to participate in an "expanded insurance program." Under this program, captive agents were authorized to place homeowners insurance policies with certain other insurance companies that were selected by Allstate.

The plaintiffs alleged that the Trahan defendants participated in the expanded insurance program without informing the general public, thereby allowing the Trahan defendants to continue to market their homeowners insurance as an Allstate product through their website, advertising, and communications with their insureds. The plaintiffs also alleged that, "[f]rom sometime before 2018 through 2021, the [Trahan] defendants have repeatedly and consciously placed hundreds of their new insurance customers, including the plaintiffs, with homeowners insurance through the expanded insurance program using deceitful and misleading practices by not fully informing their customers that they were not being insured with Allstate homeowners insurance." Finally, the plaintiffs alleged that, "[b]y placing the plaintiffs' homeowners insurance with another insurance company under false pretenses, the plaintiffs have sustained and continue to sustain losses and damages, including the loss of their residence, the loss of

their personal belongings, the loss of use of their residence, hotel expenses, interest and attorney's fees."

The court briefly addressed the plaintiffs' CUIPA/CUTPA claim at the hearing on the motions for summary judgment. The following colloquy took place between the court and the plaintiffs' counsel:

"The Court: How is there causation between the alleged misleading of the [plaintiffs] with respect to this being an Allstate policy?

"[The Plaintiffs' Counsel]: In other words, if they were never with—if they [were] informed that they were not going to be with Allstate, the [plaintiffs] would not have gone forward with [Century-National], the inspection wouldn't have occurred, they would have been . . . .

"The Court: And where—is that in the deposition or affidavits?

"[The Plaintiffs' Counsel]: I believe—no, I don't believe it is in the deposition.

"The Court: Okay. So . . . [p]resume that I'm going to find against you on that causation argument."

The court did not specifically address the plaintiffs' CUIPA/CUTPA claim in its May 4, 2022 order granting the Trahan defendants' motion for summary judgment in the second action. As explained previously, the court's order relied on Judge Schuman's analysis in his decision on the motion to strike, which addressed only the issue of whether the Trahan defendants had a duty to provide notice of nonrenewal. The plaintiffs, however, did not seek an articulation of the court's order on the motion for summary judgment, or otherwise

move for reargument or reconsideration. As indicated previously, however, the court effectively rejected the plaintiffs' claim at the hearing on the motions for summary judgment.

We conclude that the plaintiffs cannot prevail on their claim on appeal because they failed to raise a genuine issue of material fact with respect to causation of harm. A plaintiff asserting a violation of CUTPA "must prove that the ascertainable loss was caused by, or a result of, the prohibited act. General Statutes § 42-110g (a) . . . . When plaintiffs seek money damages, the [a result of] language . . . in § 42-110g (a) requires a showing that the prohibited act was the proximate cause of a harm to the plaintiff. . . . [P]roximate cause is [a]n actual cause that is a substantial factor in the resulting harm . . . . The question to be asked in ascertaining whether proximate cause exists is whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's act." (Internal quotation marks omitted.) *Herron* v. *Daniels*, 208 Conn. App. 75, 100–101, 264 A.3d 184 (2021).

Although the plaintiffs' evidence establishes an ascertainable loss, namely, the damages arising from the loss of their home after their policy was not renewed, they have failed to provide any evidence or explanation as to how being placed with Century-National rather than Allstate was a substantial factor in that loss. See id. In the absence of any such substantiation, we must conclude that the trial court properly granted the Trahan defendants' motion for summary judgment with respect to the plaintiffs' claim in the second action.

The judgments are affirmed.

In this opinion the other judges concurred.

UNITED CLEANING & RESTORATION, LLC *v.* BANK OF AMERICA, N.A.
(AC 45854)

Moll, Seeley and Keller, Js.

Syllabus

The plaintiff sought to recover damages from the defendant for an alleged breach of contract and for unjust enrichment in connection with the plaintiff's restoration of a property that had been damaged by a fire. L, the property owner, financed his purchase of the property with a mortgage loan that the defendant serviced. In addition, L obtained a homeowners insurance policy for the property from N Co. After the fire, L filed a claim with N Co. N Co. paid out insurance proceeds on the claim, which, in accordance with the loan, were held by the defendant to pay, on behalf of L, for repair and restoration of the property. L entered into a contract with the plaintiff to make repairs to the property in exchange for payments from the proceeds. Less than one year later, when the plaintiff's repair work was approximately 50 percent completed, L died. Although the defendant previously had made multiple disbursements out of the proceeds to the plaintiff as it made repairs, the defendant ceased paying the plaintiff following L's death. At the request of T, a comortgagor and coexecutor of L's estate, the defendant applied the remaining proceeds to pay down the outstanding mortgage loan balance in connection with the sale of the property. The plaintiff claimed that it was an intended third-party beneficiary of the mortgage, that the defendant violated the terms of the mortgage when it applied the proceeds to the outstanding mortgage loan balance instead of paying the proceeds to the plaintiff for the work it had completed, and that its repair work had benefited the defendant by enhancing the marketability of the property to its detriment. The defendant filed a motion for summary judgment as to both counts of the complaint, arguing that there was no genuine issue of material fact that the defendant was not a party to the proceeds contract and that the plaintiff was not a party to the note or the mortgage, that the express language of the note and the mortgage demonstrated no intent for the plaintiff to be a third-party beneficiary thereof, and that there was no genuine issue of material fact that it was not unjustly enriched by its application of the proceeds to the outstanding mortgage loan balance. The defendant supported its motion with, inter alia, a business record affidavit from S, its assistant vice president, and a supplemental affidavit from K, its counsel. The trial court granted the defendant's motion, and the plaintiff appealed to this court. *Held*:

1. The plaintiff could not prevail on its claim that the trial court erred in granting the defendant's motion for summary judgment because the

supporting affidavits did not satisfy the requirements of the applicable rule of practice (§ 17-46) and the common law:

a. The trial court did not err in considering S's affidavit in granting the defendant's motion for summary judgment; because S attested that the defendant was the mortgage loan servicer, that she, in her role as an assistant vice president, was authorized to make the affidavit, that she had personal knowledge of the facts and matters stated therein, that she was familiar with the types of records maintained by the defendant, including the loan at issue, and that she had access to and personally reviewed the defendant's business records kept in the ordinary course of its regularly conducted business, including records pertaining to the property, S was a records custodian authorized to authenticate the defendant's business records without her actual involvement in the transaction, and her affidavit sufficiently demonstrated her competency to aver to the information therein.

b. This court declined to review the plaintiff's unpreserved claim that K's affidavit did not constitute competent evidence pursuant to Practice Book § 17-46, as the plaintiff raised the claim for the first time in a motion to reargue and, on appeal, it did not challenge the trial court's denial of that motion.

2. The trial court properly rendered summary judgment for the defendant because there were no genuine issues of material fact as to either count of the plaintiff's complaint:

a. The trial court properly determined that the plaintiff was not an intended third-party beneficiary of the mortgage: the clear and unambiguous language of the note and the mortgage evinced no intent of the contracting parties to confer third-party beneficiary status on the plaintiff, as there was no direct or indirect reference to the plaintiff in either the note or the mortgage; moreover, the language of the mortgage did not require that the defendant make direct payments of the insurance proceeds to a third party and further provided that insurance proceeds would cover repairs made to the property if the repair was feasible and the defendant's security was not lessened or unless the defendant and L otherwise agreed in writing, and the purpose of that language was to protect the defendant's interests and not to serve as a guarantee on the payment of repair and restoration services; furthermore, this court was unpersuaded by the plaintiff's argument that extrinsic evidence sufficiently raised a genuine issue of material fact regarding its third-party beneficiary status, as, having concluded that the clear and unambiguous language of the mortgage reflected no intent to make the plaintiff a third-party beneficiary, the use of parol evidence to vary or contradict such language was forbidden.

b. The trial court correctly determined that there was no genuine issue of material fact as to the plaintiff's unjust enrichment claim; the defendant presented evidence that it was not benefited for the purposes of the plaintiff's unjust enrichment claim when it applied the proceeds toward

the outstanding mortgage balance and the plaintiff failed to produce evidence that it had a superior equitable entitlement to the proceeds.

Argued September 7, 2023—officially released May 28, 2024

Procedural History

Action to recover damages for, inter alia, breach of contract, and for other relief, brought to the Superior Court in the judicial district of Middlesex, where the court, *Shah, J.*, granted the defendant's motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Lisa M. Anderson, for the appellant (plaintiff).

Pierre-Yves Kolakowski, for the appellee (defendant).

Opinion

MOLL, J. The plaintiff, United Cleaning & Restoration, LLC, appeals from the judgment of the trial court granting the motion for summary judgment filed by the defendant, Bank of America, N.A., as to the plaintiff's two count amended complaint asserting claims of breach of contract and unjust enrichment. On appeal, the plaintiff claims that the court erred in granting the defendant's motion for summary judgment because the court improperly (1) considered evidence submitted by the defendant in support of its motion that failed to satisfy the evidentiary requirements of Practice Book § 17-46 and the common law, and (2) concluded that there were no genuine issues of material fact as to the plaintiff's claims.[1] We affirm the judgment of the trial court.

The following procedural history is relevant to our resolution of this appeal. The plaintiff commenced the present action on February 5, 2021. In its two count amended complaint (operative complaint), filed on March 3, 2022, the plaintiff alleged in relevant part as

[1] See footnotes 8 and 12 of this opinion.

follows. Prior to his death on February 4, 2019, Robert Lopez was the owner of premises located at 25 Deerfield Drive in Easton (property). To finance his purchase of the property, Lopez took out a mortgage loan,[2] which the defendant serviced. In addition, Lopez obtained a homeowners insurance policy for the property issued by Nationwide Property & Casualty Insurance Company (Nationwide).

In January, 2018, a fire occurred at the property. Thereafter, Lopez filed a claim with Nationwide relating to the loss caused by the fire. Nationwide paid out insurance proceeds (proceeds) on the claim, and, in accordance with the loan, the proceeds were held by the defendant to pay, on behalf of Lopez, for repairs and restoration of the property. On May 8, 2018, Lopez and the plaintiff entered into an agreement (proceeds contract) pursuant to which the plaintiff would make repairs to the property in exchange for payment from the proceeds. The plaintiff subsequently began its work on the property, and the defendant made multiple disbursements out of the proceeds to the plaintiff as repairs were made.[3]

Lopez passed away on February 4, 2019. At the time, the plaintiff's repair work was approximately 50 percent finished. Following Lopez' death, the defendant ceased paying the plaintiff for the work that it had completed. On May 8, 2019, in connection with the sale of the property, Karen Trusty, a comortgagor and a coexecutor of Lopez' estate, requested that the defendant apply

[2] In their evidentiary submissions relating to the defendant's motion for summary judgment, both parties relied on an open-end mortgage deed reflecting that, in July, 2007, Lopez and Karen Trusty executed a mortgage on the property in favor of Countrywide Home Loans, Inc., to secure a promissory note executed by Lopez in the amount of $569,750.

[3] The parties do not appear to dispute that, on July 10, 2018, Lopez notified the defendant of the loss caused by the fire and provided the defendant with a copy of the proceeds contract.

the remaining proceeds available to pay down the outstanding mortgage loan balance on the property, which request the defendant granted without consulting with or notifying the plaintiff. The plaintiff then demanded that the defendant remit payment of the outstanding balance owed for the work it had completed, totaling $46,850.13, which demand the defendant refused.

In its operative complaint, the plaintiff asserted claims of breach of contract (count one) and unjust enrichment (count two). In support of count one, the plaintiff alleged that (1) it was an intended third-party beneficiary of the mortgage and (2) the defendant violated the terms of the mortgage when it applied the proceeds to the outstanding mortgage loan balance instead of paying the proceeds to the plaintiff for the work that it had completed. In support of count two, the plaintiff alleged that, to its detriment, the defendant had applied the proceeds toward the outstanding mortgage loan balance notwithstanding that its repair work had benefited the defendant by enhancing the marketability of the property.

On March 15, 2022, the defendant filed an amended answer and special defenses. The defendant admitted in relevant part that (1) the fire at the property had occurred, (2) the mortgage required it to be named as a loss payee on Lopez' homeowners insurance policy and authorized it "to hold and disburse insurance proceeds in the event of damage to the property," (3) Nationwide paid out the proceeds for the loss caused by the fire, and (4) it had made disbursements out of the proceeds to the plaintiff prior to Trusty's request that the remaining proceeds be applied to the outstanding mortgage loan balance.[4] The defendant denied, however, the plaintiff's allegations that (1) the plaintiff was

[4] According to the defendant, between October, 2018, and May, 2019, it had disbursed $133,975 to the plaintiff out of the proceeds.

an intended third-party beneficiary of the mortgage and (2) it had breached the mortgage by failing to pay the plaintiff the alleged balance owed for the repair work. The defendant further denied the plaintiff's substantive allegations in support of count two. In addition, by way of its first special defense, the defendant alleged that it was not a party to the proceeds contract and that the mortgage expressly identified Lopez as the sole obligor with respect to contracts with third parties he entered into for the repair of the property following a loss.[5]

On April 20, 2022, the defendant filed a motion for summary judgment as to both counts of the operative complaint. The defendant's motion was accompanied by a memorandum of law, exhibits, including a copy of the mortgage, and a business records affidavit executed by an assistant vice president of the defendant, Stephanie A. Saporita (Saporita affidavit), with additional exhibits appended thereto. In addressing the plaintiff's breach of contract claim, the defendant argued that (1) there was no genuine issue of material fact that (a) it was not a party to the proceeds contract and (b) the plaintiff was not a party to the note or the mortgage, and (2) the express language of the note and the mortgage demonstrated no intent for the plaintiff to be a third-party beneficiary thereof. In addition, the defendant argued that there was no genuine issue of material fact that it was not unjustly enriched by its application of the proceeds to the outstanding mortgage loan balance.

On May 23, 2022, the plaintiff filed a memorandum of law in opposition to the defendant's motion for summary judgment, which was accompanied by the personal affidavit of the plaintiff's managing member, William Leone (Leone affidavit), and a copy of a portion

[5] The defendant asserted thirteen additional special defenses, which are not relevant to the issues on appeal.

of the mortgage. The plaintiff argued that the defendant was not entitled to summary judgment as to (1) either count of the operative complaint because the evidence submitted in support of its motion for summary judgment, including the Saporita affidavit, was "inappropriate and insufficient," (2) count one because there was a genuine issue of material fact as to whether the mortgage conferred third-party beneficiary status on the plaintiff, and (3) count two because (a) unjust enrichment is an equitable claim not suitable for adjudication by way of a motion for summary judgment and (b) the record demonstrated genuine issues of material fact. On June 6, 2022, the defendant filed a reply brief, accompanied by a supplemental affidavit of its counsel, Attorney Pierre-Yves Kolakowski (Kolakowski affidavit), with additional exhibits attached thereto.

On June 24, 2022, the court heard oral argument on the defendant's motion. On August 16, 2022, the court, *Shah*, *J.*, issued a memorandum of decision granting the defendant's motion for summary judgment as to both counts of the operative complaint. Addressing count one, the court determined that, on the basis of the clear and unambiguous language of the note and the mortgage, the plaintiff was not an intended third-party beneficiary thereof and that the plaintiff failed to show the existence of a material fact in dispute. With regard to count two, the court concluded "that the plaintiff . . . failed to raise any genuine issues of material fact given the evidence submitted by the defendant." On August 30, 2022, the plaintiff filed a motion to reargue, which the court denied on September 8, 2022. This appeal followed. Additional procedural history will be provided as necessary.

I

The plaintiff first claims that the trial court erred in granting the defendant's motion for summary judgment

as to both counts of the operative complaint because the supporting affidavits submitted by the defendant, i.e., the Saporita affidavit and the Kolakowski affidavit, did not satisfy the requirements of Practice Book § 17-46 and the common law. As to the Saporita affidavit, we disagree on the merits; as to the Kolakowski affidavit, we conclude that the plaintiff's claim is unpreserved.

A

We first turn to the plaintiff's contention that the Saporita affidavit did not constitute competent evidence pursuant to Practice Book § 17-46. Specifically, the plaintiff contends that the Saporita affidavit did not affirmatively show that Saporita possessed personal knowledge of, or was competent to aver to, the facts contained therein as she did not witness the execution of, nor personally execute, any documents relating to Lopez and the defendant, and she had not been personally involved in the matters between Lopez and the defendant. In response, the defendant relies on the business records exception to the hearsay rule to argue that the Saporita affidavit and the exhibits annexed thereto constituted competent evidence supporting the defendant's motion for summary judgment. We agree with the defendant.

We begin by setting forth the well settled legal principles and standard of review governing our resolution of this claim. Summary judgment "shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book § 17-49. "Generally, [o]ur review of the trial court's decision to grant the . . . motion for summary judgment is plenary. . . . When presented with an evidentiary issue, as in this case, our standard of review depends on the

specific nature of the claim presented. . . . Thus, [t]o the extent a trial court's admission of evidence is based on an interpretation of [law], our standard of review is plenary. For example, whether a challenged statement properly may be classified as hearsay and whether a hearsay exception properly is identified are legal questions demanding plenary review. . . . A trial court's decision to admit evidence, if premised on a correct view of the law, however, calls for the abuse of discretion standard of review." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Midland Funding, LLC* v. *Mitchell-James*, 163 Conn. App. 648, 652–53, 137 A.3d 1 (2016).

Practice Book § 17-46 provides: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto." "Section 17-46 sets forth three requirements necessary to permit the consideration of material contained in affidavits submitted in a summary judgment proceeding. The material must: (1) be based on personal knowledge; (2) constitute facts that would be admissible at trial; and (3) affirmatively show that the affiant is competent to testify to the matters stated in the affidavit. . . . Affidavits that fail to meet the criteria of . . . § 17-46 are defective and may not be considered to support the judgment." (Citation omitted; internal quotation marks omitted.) *Atlantic St. Heritage Associates, LLC* v. *Atlantic Realty Co.*, 216 Conn. App. 530, 550, 285 A.3d 1128 (2022).

"Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. . . . Unless subject to an exception, hearsay is inadmissible. . . . If the proffered evidence consists of business records, the

court must determine whether the documents satisfy the modest requirements under [General Statutes] § 52-180[6] to admit them under the business records exception to the hearsay rule. . . .

"To admit evidence under the business record exception to the hearsay rule, a trial court judge must first find that the record satisfies each of the three conditions set forth in . . . § 52-180. The court must determine, before concluding that it is admissible, that the record was made in the regular course of business, that it was in the regular course of such business to make such a record, and that it was made at the time of the act described in the report, or within a reasonable time thereafter. . . . To qualify a document as a business record, the party offering the evidence must present a witness who testifies that these three requirements have been met. . . . Additionally, business records may be authenticated by the testimony of one familiar with the books of the concern, such as a custodian or supervisor, who has not made the record or seen it made, that the offered writing is actually part of the records of business." (Citations omitted; footnote added; internal quotation marks omitted.) *HSBC Bank USA, National Assn.* v. *Gilbert*, 200 Conn. App. 335, 348–49, 238 A.3d 784 (2020).

The following additional procedural history is relevant to our resolution of this claim. In support of its motion for summary judgment, the defendant submitted the Saporita affidavit accompanied by thirteen exhibits,

[6] General Statutes § 52-180 (a) provides: "Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if the trial judge finds that it was made in the regular course of any business, and that it was the regular course of the business to make the writing or record at the time of the act, transaction, occurrence or event or within a reasonable time thereafter."

including copies of (1) the endorsed note, (2) a July 10, 2018 letter addressed to the defendant from Lopez notifying the defendant of the fire and providing the defendant with a copy of the proceeds contract, (3) payment records, and (4) email correspondence reflecting Trusty's request that the defendant apply the balance of the proceeds to the outstanding mortgage loan balance. Saporita attested that the defendant was the mortgage loan servicer, that she, as an assistant vice president of the defendant, was authorized to make the affidavit, and that she had personal knowledge of the facts and matters stated therein. Saporita further attested that, in the regular performance of her job responsibilities, she "[is] familiar with the types of records maintained by [the defendant] in connection with mortgage loans serviced by [the defendant] and/or its predecessor by merger . . . including the loan here at issue." Additionally, she attested that she had access to, and personally reviewed, business records kept in the ordinary course of the defendant's regularly conducted business activities, including the defendant's regularly kept business records pertaining to the property. Saporita also attested that, on the basis of her review of the aforementioned records, (1) Lopez and the plaintiff had entered into the proceeds contract for the restoration of the property, (2) on July 10, 2018, Lopez notified the defendant of the fire and property loss and provided the defendant with a copy of the proceeds contract, (3) the defendant made payments out of the proceeds to the plaintiff, and (4) the defendant was asked by Trusty to apply the remainder of the proceeds to the unpaid mortgage loan balance.[7]

[7] In its memorandum of decision, the court acknowledged the plaintiff's objections to the annexed exhibits, stating that it "review[ed] the evidence submitted by both parties" to reach the conclusion that no issue of material fact was in dispute. Although the court did not expressly make findings that the exhibits fell within the business records exception to the rule against hearsay and, therefore, were admissible, there is nothing in the record to suggest that it relied on the defendant's evidence as a result of an incorrect application of law. Rather, our review of the record reveals that the court

On the basis of our review of the Saporita affidavit, we conclude that (1) Saporita's employment as an assistant vice president of the defendant, and the related averments, evince her role as a records custodian authorized to authenticate the defendant's business records without her actual involvement in the transaction and (2) the affidavit sufficiently demonstrated Saporita's competency to aver to the information therein. Therefore, we conclude that the court did not err in considering the Saporita affidavit, along with the annexed exhibits, in granting the defendant's motion for summary judgment.

B

We next turn to the plaintiff's claim that the Kolakowski affidavit did not constitute competent evidence pursuant to Practice Book § 17-46. Specifically, the plaintiff argues that Kolakowski was not competent to attest to the authenticity of certain Probate Court records annexed to the Kolakowski affidavit, which related to the administration of the Lopez estate, because he "was not among the attorneys involved in the probate proceedings, and did not have custody of the Probate Court file before, during, or after preparing the [defendant's] motion [for summary judgment]." Accordingly, the plaintiff posits, the appended Probate Court records should not have been considered by the court because they were not properly authenticated by the Kolakowski

considered the arguments raised by the parties during the hearing on the motion for summary judgment and in their respective briefs, which included the defendant's argument that the business records exception applied. The plaintiff did not seek an articulation from the court on its analysis of this issue thereafter; we therefore presume that the court applied the law correctly in considering the defendant's evidence. See *State* v. *James K.*, 209 Conn. App. 441, 465, 267 A.3d 858 (2021) ("In Connecticut, our appellate courts do not presume error on the part of the trial court. . . . Rather, the burden rests with the appellant to demonstrate reversible error." (Internal quotation marks omitted.)), aff'd, 347 Conn. 648, 229 A.3d 243 (2023).

affidavit. Because we conclude that the plaintiff's claim is unpreserved, we decline to review it.

The following additional procedural history is relevant. In support of its motion for summary judgment, the defendant submitted Probate Court records that reflect a court-approved agreement between the plaintiff and the Lopez estate to settle the plaintiff's claim against the estate for amounts owed in connection with the proceeds contract. In the plaintiff's memorandum of law in opposition to the defendant's motion for summary judgment, it argued that the court should not consider the Probate Court records because they were not authenticated and, therefore, were uncertified in violation of Practice Book § 17-46. Thereafter, the defendant filed simultaneously its reply brief and the Kolakowski affidavit, attached to which were the Probate Court records. During the hearing on the defendant's motion for summary judgment, the plaintiff did not argue that the Kolakowski affidavit was defective in any way. In fact, the hearing transcript is silent as to the Kolakowski affidavit.

The plaintiff's challenge to the Kolakowski affidavit was raised for the first time in the plaintiff's motion to reargue. In denying the plaintiff's motion to reargue, the court stated in part that "the reasons provided by the plaintiff are . . . ones that could have been raised in its original opposition. The plaintiff has not shown any mistake in the application of law or a misunderstanding of the facts presented. [A] motion to reargue cannot be used to correct the deficiencies in a prior motion . . . ." (Internal quotation marks omitted.) The plaintiff on appeal does not challenge the court's denial of the motion to reargue.

"It is well known that this court is not bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. Practice Book

§ 60-5. The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the precise matter on which its decision is being asked. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court . . . to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Emphasis omitted; internal quotation marks omitted.) *Gainty* v. *Infantino*, 222 Conn. App. 785, 802, 306 A.3d 1171 (2023), cert. denied, 348 Conn. 948, 308 A.3d 36 (2024).

Our examination of the record reveals that the plaintiff raised the claim that the Kolakowski affidavit was not competent evidence with the trial court for the first time in its motion to reargue and is not challenging the court's denial of that motion in the present appeal. The plaintiff's claim, therefore, is not properly before this court. Accordingly, we decline to review it. Cf. *Wethington* v. *Wethington*, 223 Conn. App. 715, 726 n.10, 309 A.3d 356 (2024) (concluding that issue raised for first time in motion to reargue was reviewable when, inter alia, defendant claimed on appeal that court abused its discretion in denying motion).

II

The plaintiff next claims that the trial court improperly rendered summary judgment in the defendant's favor because there were genuine issues of material fact as to both counts of the operative complaint. We reject this claim.[8]

[8] The plaintiff also claims that the court erred in making factual findings in rendering summary judgment in the defendant's favor. See, e.g., *Belgada* v. *Hy's Livery Service, Inc.*, 220 Conn. App. 102, 111, 297 A.3d 199 (2023) ("[I]ssue-finding, rather than issue-determination, is the key to the procedure. . . . [T]he trial court does not sit as the trier of fact when ruling on a motion for summary judgment. . . . [Its] function is not to decide issues of material fact, but rather to determine whether any such issues exist." (Internal quotation marks omitted.)). On the basis of our review of the court's decision, we conclude that the court did not engage in fact-finding;

We begin by setting forth our standard of review and additional legal principles relevant to our resolution of this claim. "In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § [17-45]. . . . Our review of the trial court's decision to grant . . . [a] motion for summary judgment is plenary." (Footnote omitted; internal quotation marks omitted.) *Atlantic St. Heritage Associates, LLC* v. *Atlantic Realty Co.*, supra, 216 Conn. App. 539–40.

rather, applying the correct legal standard, the court determined that the defendant had established the absence of genuine issues of material fact and that, once the burden had shifted to it, the plaintiff had failed to prove the existence of any genuine issue of material fact.

A

As to count one, the plaintiff contends that there was a genuine issue of material fact as to whether it was an intended third-party beneficiary of the mortgage. The plaintiff maintains that the court improperly construed the mortgage to provide, in clear and unambiguous terms, that the parties to the mortgage did not intend for the plaintiff to be a third-party beneficiary thereof. We disagree.

"Whether a party is a third party beneficiary of a contract is a question of the intent of the contracting parties." *Connecticut Housing Finance Authority* v. *John Fitch Court Associates Ltd. Partnership*, 49 Conn. App. 142, 146, 713 A.2d 900, cert. denied, 247 Conn. 908, 719 A.2d 901 (1998). "When the language of a contract is ambiguous, the determination of the parties' intent is a question of fact . . . . [When] there is definitive contract language, [however] the determination of what the parties intended by their contractual commitments is a question of law. . . . It is implicit in this rule that the determination as to whether contractual language is plain and unambiguous is itself a question of law subject to plenary review. . . . We accord the language employed in the contract a rational construction based on its common, natural and ordinary meaning and usage as applied to the subject matter of the contract. . . . Where the language is unambiguous, we must give the contract effect according to its terms. . . . A contract is unambiguous when its language is clear and conveys a definite and precise intent. . . . The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of

the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Internal quotation marks omitted.) *CCI Computerworks, LLC* v. *Evernet Consulting, LLC*, 221 Conn. App. 491, 503–504, 302 A.3d 297 (2023).

"[O]ur courts have continued to refer to the intent of the parties to create a *direct obligation* between the promisor and the beneficiary as the test for determining whether a nonparty to the contract is a third party beneficiary thereof. . . . In determining whether a person has a right of action as a third party beneficiary, [t]he ultimate test to be applied . . . is whether the intent of the parties to the contract was that the promisor should assume a *direct obligation* to the third party [beneficiary] and . . . that intent is to be determined from the terms of the contract read in the light of the circumstances attending its making, including the motives and purposes of the parties. . . . Further, [t]he intention of the parties to a contract is to be determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. The question is not what intention existed in the minds of the parties but *what intention is expressed in the language used*. . . . Because [a] promissory note and a mortgage deed are deemed parts of one transaction and must be construed together as such . . . we turn to the express language in each of the loan instruments [as applicable]." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Connecticut Housing Finance Authority* v. *John Fitch Court Associates Ltd. Partnership*, supra, 49 Conn. App. 147.

Section 5 of the mortgage, titled "Property Insurance," provides in relevant part: "In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. . . . Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. . . . Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. . . ."

In rendering its decision as to count one, and, specifically, in considering the question of whether the plaintiff was a third-party beneficiary, the court reviewed both the note and the mortgage and concluded that "the note and mortgage concerned only Lopez' promise to pay back the amounts loaned to him and the mortgage was meant to protect the lender from any losses if all payments were not made. Additionally, section 5 of the mortgage specifically provided that '[f]ees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower.' Neither the

note nor the mortgage referenced [the plaintiff], directly or indirectly, as a direct or intended beneficiary of those contracts. The language is clear that Lopez was the sole obligor on any contracts with third parties, such as [the plaintiff]. . . . While the plaintiff points to language in section 5 regarding the payment of insurance proceeds for restoration and repair, this section states that in the event of loss, 'any insurance proceeds . . . shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened,' unless the lender and the borrower agree otherwise. The burden shifted to the plaintiff to raise issues of fact regarding its claims of being a third-party beneficiary, and it has failed to do so." (Citation omitted.)

For the reasons that follow, we agree with the court's reasoning that the language used in the note and the mortgage dispel any notion that the plaintiff was an intended third-party beneficiary thereof. As an initial matter, there is no direct or indirect reference to the plaintiff in either the note or the mortgage. Lopez was the sole signatory to the note as a borrower, and only Lopez and Trusty were signatories to the mortgage as coborrowers. Second, § 5 of the mortgage, governing "Property Insurance," does not require that the defendant make direct payments of insurance proceeds to a third party such as the plaintiff and further provides that insurance proceeds shall cover repairs made to the property "if the restoration or repair is economically feasible and Lender's security is not lessened," "[u]nless Lender and Borrower otherwise agree in writing." Third, the purpose of § 5 of the mortgage is to protect the defendant's interests and not to serve as a guarantee on the payment of repair and restoration services, the obligation of which belonged to the borrower. In sum, the clear and unambiguous language of the foregoing provisions, read collectively, evinces no intent of the

contracting parties to confer third-party beneficiary status to the plaintiff.

The plaintiff relies on the isolated portion of § 5 of the mortgage providing that "any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened" to contend that there is ambiguity as to whether it was intended to be a third-party beneficiary of the mortgage, thereby creating a factual issue regarding the intent of the parties to the mortgage. According to its reading of this language, the plaintiff posits that "*any* insurance proceeds" distributed following a loss must be used to pay the plaintiff because it is "the one responsible for 'restoration or repair of the Property.' " (Emphasis altered.) We iterate that "the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous" and that "[t]he contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so." (Internal quotation marks omitted.) *CCI Computerworks, LLC* v. *Evernet Consulting, LLC*, supra, 221 Conn. App. 503–504. Further, the plaintiff disregards the prefatory clause directly preceding the mortgage provision on which it relies, namely, "Unless Lender and Borrower otherwise agree in writing . . . ." As we explain in the preceding paragraph, when read collectively, the relevant portions of § 5 of the mortgage are clear and unambiguous in evincing no intent by the parties to the mortgage to confer third-party beneficiary status on the plaintiff.

In addition, the plaintiff argues that there was extrinsic evidence that sufficiently raised a genuine issue of

material fact regarding the plaintiff's third-party beneficiary status under the mortgage.[9] The plaintiff asserts that this extrinsic evidence assists in interpreting the relevant contractual terms on the question of intent and supports the position that the plaintiff is a third-party beneficiary under the mortgage. As we set forth earlier, however, "[t]he question is not what intention existed in the minds of the parties but *what intention is expressed in the language used*." (Emphasis in original; internal quotation marks omitted.) *Connecticut Housing Finance Authority* v. *John Fitch Court Associates Ltd. Partnership*, supra, 49 Conn. App. 147. Because, as we have concluded, the clear and unambiguous language of the note and the mortgage reflects no intent to make the plaintiff a third-party beneficiary thereof, the use of parol evidence to vary or contradict such language is forbidden. See *Hirschfeld* v. *Machinist*, 181 Conn. App. 309, 323–24, 186 A.3d 771, cert. denied, 329 Conn. 913, 186 A.3d 1170 (2018).

In sum, we conclude that the court properly determined that the note and the mortgage, in clear and unambiguous terms, evinced no intent for the plaintiff to be a third-party beneficiary thereof and that there was no genuine issue of material fact barring the rendering of summary judgment as a matter of law in the defendant's favor on count one.

B

As to count two, the plaintiff claims that there existed genuine issues of material fact regarding its unjust enrichment claim. We are unpersuaded.

[9] Specifically, the plaintiff cites (1) averments made in the Leone affidavit, (2) averments made in the Saporita affidavit, (3) evidence of payments from the proceeds made by the defendant to the plaintiff, and (4) a disclosure filed by the plaintiff on March 14, 2022, of an expert witness, who, according to the plaintiff, would offer testimony relating to the third-party beneficiary issue, "as the issue of whether the plaintiff was an intended beneficiary under the mortgage is of a particularly complex nature . . . ."

"Unjust enrichment is a legal doctrine to be applied when no remedy is available pursuant to a contract. . . . In order for the plaintiff to recover under the doctrine, it must be shown that the [defendant] [was] benefited, that the benefit was unjust in that it was not paid for by the [defendant], and that the failure of payment operated to the detriment of the plaintiff." (Internal quotation marks omitted.) *CCI Computerworks, LLC* v. *Evernet Consulting, LLC*, supra, 221 Conn. App. 508.

In rendering summary judgment in the defendant's favor on count two, the court stated in relevant part that "the plaintiff claims that the defendant was unjustly benefited because the plaintiff performed the work at the property and the defendant . . . applied the sales proceeds[10] to the note and mortgage, instead of paying the plaintiff. Specifically, the plaintiff's work enriched the defendant because the repair work increased the value the defendant was able to obtain for the [property]. In an unjust enrichment case, '[t]he question is: did he, [the party liable] to the detriment of someone else, obtain something of value to which he was not entitled?' . . . *Piccolo* v. *American Auto Sales, LLC*, [195 Conn. App. 486, 496, 225 A.3d 961 (2020)]. The defendant bargained to be legally entitled to the maintenance of the value of its collateral without additional expenses under the mortgage's terms. Additionally, the defendant was not a party to the proceeds contract and had no obligation to make any of the payments due under that agreement." (Footnote added.)

The plaintiff asserts that the court overlooked evidence that it submitted demonstrating that its repair work benefited the defendant by enhancing the marketability of the property while causing the plaintiff to

[10] Although the court refers to "sales proceeds," we presume the court was addressing the insurance proceeds as discussed in this opinion.

incur a monetary loss.[11] As the court determined, however, the defendant established that there was no genuine issue of material fact that it did not " 'obtain something of value to which [it] was not entitled' " because it was "legally entitled to the maintenance of the value of its collateral without additional expenses under the mortgage's terms . . . ." In other words, the court concluded that the defendant was *not* "benefited" for purposes of the plaintiff's unjust enrichment claim when it applied the proceeds toward the outstanding mortgage loan balance.[12] In fact, the record reflects that, at the time Trusty requested that the defendant apply the remaining proceeds available to pay down the outstanding mortgage loan balance, the available insurance proceeds were insufficient to cover the balance (leaving the estate to pay the remaining balance). Simply put, the defendant demonstrated that it did not receive more than it was entitled to under the loan. Because the defendant's evidence demonstrated that there was no genuine issue of material fact relating to this element of the plaintiff's claim, the plaintiff was obligated to set forth sufficient evidence to raise a genuine issue of material fact that it has a superior equitable entitlement to the proceeds. The plaintiff failed to do so.[13]

[11] Specifically, as supporting evidence, the plaintiff refers to (1) averments made in the Leone affidavit and (2) its expert witness disclosure filed on March 14, 2022.

[12] The plaintiff also claims that the court "incorrectly ma[de] equitable determinations in contravention of [the] standard on this disposition of summary judgment." This claim is untenable under the same rationale that we set forth in footnote 8 of this opinion.

In addition, while citing no appellate authority for the proposition, the plaintiff appears to raise a distinct contention that an unjust enrichment claim, given its equitable nature, is not suitable for adjudication by way of a motion for summary judgment. This claim is without merit. Cf. *Professional Electrical Contractors of Connecticut, Inc.* v. *Stamford Hospital*, 196 Conn. App. 430, 442–43, 230 A.3d 773 (2020) (summary judgment on unjust enrichment claim, although available, was not proper when movant failed to demonstrate absence of genuine issue of material fact).

[13] The plaintiff argues that the trial court failed to consider the plaintiff's expert disclosure of James McConnon dated March 14, 2022, which,

In sum, we conclude that the court correctly determined that there were no genuine issues of material fact concerning either count of the operative complaint and that the defendant was entitled to summary judgment as a matter of law.

The judgment is affirmed.

In this opinion the other judges concurred.

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according to the plaintiff, created a genuine issue of material fact with respect to each count. This argument is without merit.

It is well settled that any evidence considered in connection with a motion for summary judgment must be *admissible*. See *Hudson City Savings Bank* v. *Hellman*, 196 Conn. App. 836, 861, 231 A.3d 182 (2020) (court is limited to considering documents that would be admissible at trial); *Midland Funding, LLC* v. *Mitchell-James*, supra, 163 Conn. App. 655 ("[o]nly evidence that would be admissible at trial may be used to support or oppose a motion for summary judgment"). An expert *disclosure* pursuant to Practice Book § 13-4—which is prepared, signed, and filed either by a self-represented party or a party's attorney (here, the plaintiff's attorney) and which is not signed by the expert witness identified therein—is not admissible evidence. Unlike the deposition testimony of an expert witness, an expert witness affidavit, or a written report of an expert witness, an expert witness disclosure has no evidentiary value. See, e.g., *Universal North America Ins. Co.* v. *Bentley*, Superior Court, judicial district of Fairfield, Docket No. CV-20-6100732-S (June 7, 2022) ("[a]n expert disclosure is not admissible evidence").